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51

MISCELLANEOUS BILLS

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HEARING BEFORE THE COMMITTEE ON ARMED SERVICES UNITED STATES SENATE EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. 3834

PROVIDING FOR PRICE ADJUSTMENTS IN CONTRACTS
FOR THE PROCUREMENT OF MILK BY THE DEPARTMENT
OF DEFENSE

H.R. 7973

PROVIDING PUBLIC QUARTERS AND UTILITIES WITHOUT
CHARGE TO CIVILIAN INSTRUCTORS AT THE U.S.
MILITARY ACADEMY

H.R. 9916

SELECTION OF CANDIDATES FOR APPOINTMENT TO
SERVICE ACADEMIES

H.R. 16646

AUTHORIZING AWARD OF EXEMPLARY REHABILITATION
CERTIFICATES

SEPTEMBER 29, 1966

Printed for the use of the Committee on Armed Services



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C O N T E N T S

	Page
S. 3834	
statements of:	1
Hon. Gordon Allott, U.S. Senator from Colorado-----	13
Dale R. Babione, Deputy Executive Director for Procurement and Production, Defense Supply Agency-----	2
Hon. Peter H. Dominick, U.S. Senator from Colorado-----	13
National Milk Producers Federation-----	14
H.R. 7973	30
Col. Frederick G. Rockwell, Office of Army Deputy Chief of Staff for Personnel-----	30
H.R. 9916	25
Lt. Col. William J. Mahon, Chief, Air Force Academy Activities Group, Directorate of Personnel Training and Education, Deputy Chief of Staff, Personnel, Headquarters, USAF-----	26
{H.R. 16646	15
Congressman Roy H. McVicker of Colorado-----	23
Marshall C. Miller, Assistant Chief, Veterans Employment Service, Department of Labor-----	17
Reserve Officers Association of the United States-----	24
Lt. Col. William A. Temple, Office, Deputy Assistant Secretary of Defense for Military Personnel Policy-----	19
Veterans of Foreign Wars-----	24

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MISCELLANEOUS BILLS

THURSDAY, SEPTEMBER 29, 1966

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The committee met, pursuant to call, at 10:30 a.m., room 212, Old Senate Office Building, Senator Richard B. Russell (chairman) presiding.

Present: Senators Russell of Georgia, Symington, Cannon, Young of Ohio, Inouye, Byrd of Virginia, Saltonstall, and Smith.

Also present: William H. Darden, chief of staff; T. Edward Braswell and Gordon A. Nease, professional staff members; Charles B. Kirby, chief clerk; and Herbert S. Atkinson, assistant chief clerk.

Chairman RUSSELL. The first bill on the committee agenda this morning is S. 3834, which was introduced by Senators Allott and Dominick, to authorize price adjustments on certain Defense milk contracts.

(The bill referred to follows.)

S. 3834

[S. 3834, 89th Cong., 2d sess.]

A BILL To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 141 of title 10, United States Code, is amended—

(1) by inserting at the end thereof the following new section:

“§ 2390. Contracts for the procurement of milk; price adjustment

“(a) Under regulations prescribed by the Secretary of Defense a contract of the Department of Defense for the procurement of milk where the period of performance exceeds ninety days shall include a provision for an equitable price adjustment for increased or decreased prices paid by a contractor for such milk as a result of increases or decreases in the producer price of fluid milk for beverage purposes ordered by the Secretary of Agriculture after the date of bid opening in a formally advertised procurement or the date of the contract in a negotiated procurement.

“(b) Under regulations prescribed by the Secretary of Defense, any contract for the procurement of milk which was being performed on or after March 1, 1966, may be amended to provide an equitable price adjustment for increased prices paid by a contractor for such milk as a result of increases in the producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture on or after March 1, 1966. A price adjustment shall not be made unless it has been determined by the Department that—

“(1) such amount was not included in the contract price; or
“(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

“(3) the contractor will suffer a loss under the contract because of such increases in producer prices.”

(2) by inserting the following new item in the analysis thereof:

“2390. Contracts for the procurement of milk; price adjustment.”

Chairman RUSSELL. Members of the committee will probably recall that the Defense appropriations bill this year contained a Senate amendment that was intended to provide this relief.

However, certain milk marketing orders of the Secretary of Agriculture have required milk suppliers to the Department of Defense to pay higher prices than those in effect at the time the contracts were entered into. Without express legislative authority, the Department of Defense cannot afford any relief to these contractors.

The witness on the bill is Mr. Dale R. Babione, Deputy Executive Director for Procurement and Production, Defense Supply Agency.

Will you please have a seat at the table, Mr. Babione.

STATEMENT OF DALE R. BABIONE, DEPUTY EXECUTIVE DIRECTOR FOR PROCUREMENT AND PRODUCTION, DEFENSE SUPPLY AGENCY; ACCOMPANIED BY JULIAN F. ROSS, SMALL BUSINESS ADVISER AND ALBERT RABY, JR., ASSISTANT COUNSEL, DEFENSE SUPPLY AGENCY

Mr. BABIONE. Mr. Chairman and members of the committee, I am Dale R. Babione, Deputy Executive Director, Procurement and Production, Defense Supply Agency. I am accompanied by Mr. Julian F. Ross, on my right, Defense Supply Agency small business adviser and Mr. Albert Raby, Jr., assistant counsel, Defense Supply Agency, on my left.

We are pleased to have the opportunity to present to you the Department of Defense views on S. 3834, 89th Congress, a bill to amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

The purpose of the bill is to require the inclusion in future Department of Defense contracts for the procurement of milk of a provision for equitable price adjustments for increased or decreased prices paid by a contractor for such milk as a result of increases or decreases ordered by the Secretary of Agriculture in the producer prices of fluid milk for beverage purposes.

The bill would also provide relief for contractors, performing contracts for milk on or after March 1, 1966, who have suffered losses because of increases in producer prices for fluid milk for beverage purposes ordered by the Secretary of Agriculture on or after March 1, 1966, where the contracts contain no provision for such price adjustment.

The Department of Defense agrees with the objectives of the proposed legislation. Under Federal milk marketing orders in effect in parts of 35 States and the District of Columbia the minimum price which the handler (the dairy) is required to pay the producer (the farmer) for fluid milk for beverage purposes is regulated by the Secretary of Agriculture. In March 1966, and again in June 1966, the Secretary of Agriculture increased these minimum prices. Handlers subject to the orders, the holding long-term contracts with the Department of Defense on the effective date of the orders, were required to pay these increased prices to producers but could not obtain a corresponding increase in their fixed price Defense contracts. In the absence of legislation the Department of Defense is unable to afford these contractors any relief.

Milk prices have been rising this past year even in those market areas which are not regulated by Federal milk marketing orders. Under subsection (a) of the proposed section, however, only dairies regulated by Federal milk marketing orders would be covered. Other dairies could also suffer losses just as severe because of actions of the Secretary of Agriculture, such as an increase in the support price for manufacturing milk or because of the impact on the market price for milk of amendments or suspensions of Federal milk marketing orders.

The Department of Defense was, prior to the introduction of S. 3834 already in the process of exploring several methods for achieving the objectives of the legislation. Among the methods being considered are use of an escalation provision, shorter term contracts, and provisions for adjustment prices on contract extensions.

It might appear that escalation is an obvious method for accomplishing the objective. However, it is not only cumbersome to administer, but difficult to apply equitably to all contractors. Procurement of milk is made by formal advertising with award made to the low competitive bidder. Hence, an escalation clause would pose problems to which we do not at this point have ready answers. For example, there would be problems in evaluating bids between handlers in regulated areas and handlers in nonregulated areas and in assessing the impact of the marketing order on a particular contract without knowledge of the cost basis for the handler's bid.

These problems are compounded by the fact that the price of fluid milk is regulated by over 70 different Federal milk marketing orders and numerous State and local controls. Furthermore, enactment of provisions requiring the inclusion of escalation clauses in milk contracts would establish an undesirable precedent which would tend to undermine the benefits of competitive fixed price contracting. Producers and suppliers of many other commodities susceptible to cost change could be expected to seek similar legislation.

Accordingly, it is recommended that subsection (a) of the proposed section be deleted with the understanding that the Department of Defense will develop procedures in connection with the procurement of milk within existing administrative authority to avoid situations comparable to that which occurred as a consequence of the recent actions by the Department of Agriculture.

Subsection (b) of the proposed new section would provide relief for those Defense contractors required to pay higher prices to milk producers because of increases in producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture. In areas not covered by Federal milk marketing orders this increase in the manufacturing milk price could have had an effect on the price paid by Defense contractors to producers for fluid milk for beverage purposes because of its impact on the general market price for milk. In order to provide equitable treatment for all Defense contractors adversely affected by orders of the Secretary of Agriculture in increasing the price of milk, it would be necessary to revise subsection (b) of the bill to provide for price adjustments on the basis of actions of the Secretary of Agriculture increasing the price of milk without limiting such action to increases in producer prices for fluid milk for beverage purposes. Regulations would provide that contractors seeking relief under such a provision would be required to show how these actions of the Secretary of Agriculture affected the price they were required to pay.

We have submitted for your consideration a draft of a bill incorporating the changes I have suggested. In addition, the revised draft includes a clarification in subsection (b)(3), line 22, page 2 of the bill. The revised language makes clear that an adjustment in the contract price is not authorized for loss of anticipated profits. Also the section should be numbered 2389 instead of 2390 since the last section in chapter 141, title 10 is now numbered 2388.

The cost to the Department of Defense of the price adjustments authorized by the bill cannot be ascertained at this time.

I will be happy to respond to any questions the committee may have.

Chairman RUSSELL. The bill that you suggested is retroactive only to March 1 of this year?

Mr. BABIONE. That is correct.

Chairman RUSSELL. I suppose your difficulty in getting the cost estimate derives from the fact that there are so many different increases in so many different areas, milk sheds?

Mr. BABIONE. Yes, Mr. Chairman. Also we have to determine the validity of how they were adversely affected, and so on.

Chairman RUSSELL. Down in the country from whence I came, when a man signed a contract and the prices changed on him, he was just unlucky, but our great and good Government has contracts for the manufacture of ships, tanks, and planes, so I don't know why we shouldn't do it for the producers of milk. Senator Saltonstall.

Senator SALTONSTALL. Mr. Chairman, after that remark, which seems to indicate that you believe in the bill—

Chairman RUSSELL. No, I didn't intend to create that impression, to try to influence any other members in their vote.

Senator SALTONSTALL. Mr. Chairman, I would like to ask several questions here. I know that the Senators from Colorado are very much interested in this subject. A letter was addressed from the General Counsel of the Department of Defense dated September 28, and that includes at the end a copy of a bill on this subject.

(A copy of the letter referred to follows:)

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., September 28, 1966.

Hon. RICHARD B. RUSSELL,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of Defense on S. 3834, 89th Congress, a bill "To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense."

The purpose of the bill is to require the inclusion in future Department of Defense contracts for the procurement of milk of a provision for equitable price adjustments for increased or decreased prices paid by a contractor for such milk as a result of increases or decreases ordered by the Secretary of Agriculture in the producer prices of fluid milk for beverage purposes. The bill would also provide relief for contractors performing contracts for milk on or after 1 March 1966 who have suffered losses because of increases in producer prices for fluid milk for beverage purposes ordered by the Secretary of Agriculture on or after 1 March 1966 where the contracts contain no provision for such price adjustment.

The Department of Defense agrees with the objectives of the proposed legislation, Under Federal Milk Marketing Orders in effect in parts of 35 states and the District of Columbia the minimum price which the handler (the dairy) is required to pay the producer (the farmer) for fluid milk for beverage purposes is regulated by the Secretary of Agriculture. In March 1966 and again in June 1966 the Secretary of Agriculture increased these minimum prices. Handlers subject to

the orders and holding long term contracts with the Department of Defense on the effective date of the orders were required to pay these increased prices to producers but could not obtain a corresponding increase in their fixed price Defense contracts. In the absence of legislation the Department of Defense is unable to afford these contractors any relief.

Milk prices have been rising this past year even in those market areas which are not regulated by Federal Milk Marketing Orders. Under Subsection (a), however, only dairies regulated by Federal Milk Marketing Orders would be covered. Other dairies could also suffer losses just as severe because of actions of the Secretary of Agriculture such as an increase in the support price for manufacturing milk or because of the impact on the market price for milk of amendments or suspension of Federal Milk Marketing Orders.

The Department of Defense was, prior to the introduction of S. 3834, already in the process of exploring several methods for achieving the objectives of the legislation. Among the methods being considered are use of an escalation provision, shorter term contracts, and provisions for adjusting prices on contract extensions. It might appear that escalation is an obvious method for accomplishing the objective. However, it is not only cumbersome to administer, but difficult to apply equitably to all contractors. Procurement of milk is made by formal advertising with award made to the low competitive bidder. Hence, an escalation clause would pose problems to which we do not at this point have ready answers. For example, there would be problems in evaluating bids between handlers in regulated areas and handlers in non-regulated areas and in assessing the impact of the marketing order on a particular contract without knowledge of the cost basis for the handler's bid. These problems are compounded by the fact that the price of fluid milk is regulated by over 70 different Federal Milk Marketing Orders and numerous state and local controls. Furthermore, enactment of provisions requiring the inclusion of escalation clauses in milk contracts would establish an undesirable precedent which would tend to undermine the benefits of competitive fixed price contracting. Procedures and suppliers of many other commodities susceptible to cost changes could be expected to seek similar legislation. Accordingly, it is recommended that Subsection (a) of the proposed section be deleted with the understanding that the Department of Defense will develop procedures in connection with the procurement of milk within existing administrative authority to avoid situations comparable to that which occurred as a consequence of the recent actions by the Department of Agriculture.

Subsection (b) of the proposed new section would provide relief for those Defense contractors required to pay higher prices to milk producers because of increases in producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture. However, the bill would not provide relief for those contractors required to pay higher prices to producers because of increases in the price of manufacturing milk ordered by the Secretary of Agriculture. In areas not covered by Federal Milk Marketing Orders this increase in the manufacturing milk price could have had an effect on the price paid by Defense contractors to producers for fluid milk for beverage purposes because of its impact on the general market price for milk. In order to provide equitable treatment for all Defense contractors adversely affected by orders of the Secretary of Agriculture in increasing the price of milk, it would be necessary to revise Subsection (b) of the bill to provide for price adjustments on the basis of actions of the Secretary of Agriculture increasing the price of milk without limiting such action to increases in producer prices for fluid milk for beverage purposes. Regulations would provide that contractors seeking relief under such a provision would be required to show how these actions of the Secretary of Agriculture affected the price they were required to pay.

There is enclosed for your consideration a draft of a bill incorporating the changes recommended above. In addition, a clarifying change is recommended in Subsection (b)(3), line 22, page 2 of the bill. The revised language in the enclosed draft makes clear that an adjustment in the contract price under the bill is not authorized for loss of anticipated profits. Also, the new section should be numbered 2389 instead of 2390 since the last section in Chapter 141, Title 10, is now numbered 2388.

The cost to the Department of Defense of the price adjustments authorized by the bill cannot be ascertained at this time.

The Bureau of the Budget advises that while there is no objection to the submission of this report, the Bureau is seriously concerned about the enactment of legislation to pay for losses incurred in the performance of a fixed-price government contract. In general, the Bureau of the Budget thinks the reasons cited

earlier in the report against inclusion of escalation clauses in future contracts are equally valid arguments against provision of relief for losses sustained under past contracts. In particular, it appears to the Bureau that long-term suppliers of milk under the contracts covered by the bill assumed the risk of rising milk prices during the contract period; signs of rising prices evidently appeared in the latter part of 1965, and the actions of the Secretary of Agriculture not only tended to follow rather than force price rise but also were only one element in the extremely complex play of market forces determining the price of milk. To grant relief to the suppliers covered by this bill could easily lead, in the opinion of the Bureau, to demands for similar relief by suppliers of milk to other Federal and to non-Federal consumers as well as by all suppliers of commodities and services who assert their losses are due to official actions of the Federal Government.

Sincerely yours,

PAUL C. WARNEKE.

A BILL To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 141 of title 10, United States Code, is amended—

(1) By inserting at the end thereof the following new section:

“§ 2389. Contracts for the procurement of milk; price adjustment

“Under regulations prescribed by the Secretary of Defense, any contract for the procurement of fluid milk for beverage purposes which was being performed on or after March 1, 1966, may be amended to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture on or after March 1, 1966, increasing the price of milk. A price adjustment shall not be made unless it has been determined by the Department that—

“(1) such amount is not included in the contract price;

“(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

“(3) the contractor will suffer a loss, not merely a diminution of anticipated profit, under the contract because of such increases in producer prices.”; and

(2) By inserting the following new item in the analysis thereof:

“2389. Contracts for the procurement of milk; price adjustment.”

Senator SALTONSTALL. It is my understanding, or I am told, that the subcommittee in the House has reported out the Defense Department bill as it is written, is that correct?

Mr. BABIONE. That is our understanding; yes, Senator.

Senator SALTONSTALL. So really, if the Department of Defense approves of this bill, and if the House passes it, then what you would like to have the Senate do would be to pass the same bill, and that would be agreeable to the Department of Defense.

Mr. BABIONE. Yes, sir.

Senator SALTONSTALL. Now there are several things that I would like to ask about. You say here—

A price adjustment shall not be made unless it has been determined by the Department that, one, such amount is not included in the contract price.

Now, just what do you mean by that?

Mr. BABIONE. What we mean by that is that the amount which the contractor initially offered the Government did not provide a sufficient amount of cost to pay the additional cost that is now in effect as a result of a Federal milk marketing order.

Senator SALTONSTALL. Then the contract wouldn't be a fixed price contract, would it? I called that to the chairman's attention. That word “such amount” is not clear to me, because if it is a fixed price contract and they are making somewhat of a profit, then this bill

wouldn't apply, necessarily, even if the cost to the producer had gone up and the contractor had to pay more.

I just am not clear what you mean by that No. 1—

Price adjustments shall not be made unless it has been determined by the Department that, one, such amount is not included in the contract price.

There may be a very simple explanation to that, but I just wondered what it was?

Mr. BABIONE. Our intent is to examine after the fact the claim of the contractor that at the time he submitted his quotation he took into effect reasonable forecast of what would be the producer prices—

Senator SALTONSTALL. I see what you mean.

Mr. BABIONE. As regulated by the Department of Agriculture, and that subsequent to that time action was taken that he could not have forecast and that adversely affected him and caused him to suffer a loss, and that he is seeking relief in that amount.

Senator SALTONSTALL. In other words, that the amount of the increase or the amount of the increased cost to the contractor, if he knew of that when he made the contract and still made a fixed contract, then this No. 1 would apply.

Mr. BABIONE. That is right; yes, sir.

Senator SALTONSTALL. Now the second question I would ask is on No. 3—you say—

The price adjustments shall not be made unless it has been determined by the Department that the contractor will suffer a loss not merely a diminution of anticipated profit under the contract because of such increases in producer prices."

Isn't that pretty rough? In other words, not only will the contractor have no profit, but he has actually got to show a loss before the Department will change that contract. That seems to me a little rough.

Mr. BABIONE. That is the intent, and the reason that we recommend that is because that has been the consistent policy followed by the Department of Defense in granting the relief under other administrative remedies available to the Department. The position of the Department of Defense has been that we are not in a position of guaranteeing profit simply because you deal with the Department of Defense, and that when cases arise where we feel there is a valid claim for relief, those cases have been adjudicated on the basis of only restoring losses.

Senator SALTONSTALL. But don't you personally think that that is a little tough? I make a contract with you, and then, if I may say most respectfully to my chairman and the gentleman on the other side of the aisle, a bureaucrat in the department of government increases the price to the producer, so that the man with whom I make a contract now not only has no profit, but he has got to show a loss before another department buying the milk will allow a change in price.

Mr. BABIONE. I think it is a matter of judgment, Senator, and I think that reasonable people will have varying opinions on this point, but that is the policy we have followed in the past in granting relief in other situations.

Senator SALTONSTALL. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Symington.

Senator SYMINGTON. Thank you, Mr. Chairman. Missouri people are interested in this. I refer back to what Senator Saltonstall said to the effect that price adjustments shall not be made unless it has been determined by the Department that such amount was not included in the contract price. What amount are you talking about?

Mr. BABIONE. The amount of the claimed loss resulting from increases in producer prices required by the milk marketing order.

Senator SYMINGTON. How could the amount be included in the contract if the contract was made before the decision from the Department of Agriculture?

Mr. BABIONE. He could have been paying more than the minimum required. The Federal milk marketing orders only establish a minimum price. Suppose the minimum price established was \$5 a hundred-weight and he already was figuring \$5.50 a hundredweight. Maybe the milk marketing order did not even adversely affect his cost because he was paying more than the minimum, as opposed to the case paying right at the minimum.

Senator SYMINGTON. Then the whole situation is theoretical, is it not?

Mr. BABIONE. I believe each case will have to be adjudicated on the information and circumstances surrounding that particular contract.

Senator SYMINGTON. I don't want to labor it, but I just don't see why you have that in. If the amount was not included in the contract price, why is there any problem? If it is included in the contract price, why is there any problem? Let's skip that for a minute and go to the point the Senator from Massachusetts made.

Suppose the Government has a contract to build airplanes, and agrees to take aluminum from the Government stockpile at say 30 cents a pound. Certainly, the Government wouldn't expect the contractor to absorb a higher price if another Government agency increased the price of the aluminum being supplied to the contractor to, say, 40 cents a pound. That is what we are talking about, aren't we?

The action of the Secretary of Agriculture was an executive action which automatically increased the price, action by another Government agency, after the contractor in good faith has made a contract with a second Government agency.

If you make a contract based on the position of the Department of Agriculture, and then the Department of Agriculture arbitrarily increases cost, you would be in the same position as if the Office of Emergency Planning automatically increased the cost of aluminum they were supplying to a contractor to produce airplanes; isn't that correct?

Mr. BABIONE. It would be a similar situation. It would seem so.

Senator SYMINGTON. If that is true, inasmuch as the contractor himself had nothing to do with the increase in price, and the supplier to the contractor had nothing to do with the increase in price, and the increase is the result of a Government directive which neither of the two parties incident to the contract had anything to do with or knew about, it would seem only logical and fair that those facts should be recognized in the contract; isn't that correct?

Mr. BABIONE. Yes, sir.

Senator SYMINGTON. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Cannon.

Senator CANNON. Mr. Chairman, I certainly agree with the points that have been made by the distinguished Senator from Massachusetts and the Senator from Missouri that if you have a fixed-price contract, and I would like to ask the witness, if you have a cost-plus contract and the cost goes up through no fault of the contractor, you don't reduce the contractor's profit on it, do you?

Mr. BABIONE. No, sir.

Senator CANNON. And you pay him the agreed percentage of profit no matter how much the cost goes up; not necessarily whether he is or is not losing money on the contract.

Mr. BABIONE. In a cost-plus-fixed-fee contract, the contractor has a fixed fee and does not assume the risks of rising costs. The difference is that we pay a higher profit on firm fixed-price contracts than on cost type for the very reason that the contractor assumes risk of fluctuating markets that could adversely affect him under normal circumstances. The problem is in determining what is an abnormal risk or a normal business risk, and to the extent that the contractor can forecast or is willing to risk future market fluctuations, he does take on a responsibility for normal business risks which does affect his profit one way or the other.

Senator CANNON. Would you say it is a normal business risk when the Government steps in and fixes the price that raises his costs very materially, that that is a normal business risk?

Mr. BABIONE. I think that we have to examine each situation in the light of the events that affected it. It is very difficult to say.

Senator CANNON. That doesn't answer my question. Do you think that when the Government steps in and takes action that raises the contractor's costs, that you would assume that to be a normal business risk?

Mr. BABIONE. In the context of the cases involving milk marketing orders and complaints we have received, we agree that there have been some abnormal risks that have taken place, and we are recommending a revision to the proposed legislation to correct it.

Senator CANNON. All right. Then if it is an abnormal risk, wouldn't you say that it should depend on whether the fact actually occurred rather than whether the contractor lost money or reduced his profit?

Mr. BABIONE. There are two things that we are talking about here. One is to establish that he was adversely affected by whatever happened.

Senator CANNON. That is right.

Mr. BABIONE. And the second part is the policy of not granting relief in excess of his actual loss. Now the part about not granting relief in excess of his loss is based on the policy that contracting with the Department of Defense does not guarantee a profit, and it is based also on other types of relief that we have provided under other administrative remedies, we have followed this policy.

Senator CANNON. Are you saying that any time you renegotiate a contract with a contractor, that you only allow him to recoup his loss and not to recoup any profit?

Mr. BABIONE. We are talking about extraordinary relief versus negotiation.

Senator SYMINGTON. Will the Senator yield?

Senator CANNON. I will be very happy to yield.

Senator SYMINGTON. What you are saying is that, if a man puts a contract in and estimates a profit of 8 percent, and after he makes the contract the Secretary of Agriculture makes a decision that eliminates his profit, you are going along with that elimination. That is clear. You say "The contractor will suffer a loss under the contract because of such increases in producer prices." In effect you are letting the Secretary of Agriculture, without a hearing, renegotiate this price for milk downward to the point where the contractor could lose all his profit; isn't that correct?

Mr. BABIONE. The circumstances that you outline could take place.

Senator SYMINGTON. "Could take place"? It does take place. You ask us to pass a law which would insure it would take place. You say "A price adjustment shall not be made unless it has been determined by the Department the contractor will suffer a loss." The obvious implication is he can only recover loss.

Mr. BABIONE. That is correct.

Senator SYMINGTON. Not any profit.

Mr. BABIONE. That is correct.

Senator SYMINGTON. So let the Department of Agriculture renegotiate a contract made by the Department of Defense. That would appear plain silly.

I thank the able Senator for yielding.

Senator CANNON. Following up on the example that the Senator from Missouri gave, the Senator took an example of a man figuring in an 8-percent profit. Let's assume, because of the action of the Secretary of Agriculture, he doesn't have his 8-percent profit in this fixed price contract, but he has one-tenth of 1 percent profit. You are in effect saying, if this legislation were to pass, that this contract then could not be renegotiated because he didn't sustain a loss, but he is limited to his one-tenth of 1 percent profit, is that correct?

Mr. BABIONE. The relief would be granted to his actual loss, yes, sir.

Chairman RUSSELL. Is there anything in this bill that would protect the interests of the Government if a bureaucrat lowered the price of milk greatly?

Mr. BABIONE. No, sir, not under the relief provision.

Chairman RUSSELL. His profits would be greatly enhanced and the Government would be without any recourse whatever in that event, would it not?

Mr. BABIONE. That is correct.

Chairman RUSSELL. Senator Smith.

Senator SALTONSTALL. Would the Senator yield for a comment? Have you ever heard, as chairman of this committee now for a great many years, a bureaucrat lowering the prices?

Chairman RUSSELL. Yes. Milk has been lowered in a number of instances in these milk shed hearings. Senator Smith.

Senator SMITH. I have no questions.

Chairman RUSSELL. Senator Young.

Senator YOUNG. Thank you, Mr. Chairman. If you are a knowledgeable contractor, say you are dealing in milk or in any other product, before you enter into a long-term contract you are obligated to figure out the risks, aren't you, whether they are normal or abnormal risks?

Mr. BABIONE. Yes, sir.

Senator YOUNG. By the way, in your statement you refer to handlers subject to the orders holding long-term contracts. How long are those contracts as a rule?

Mr. BABIONE. They vary from 3 months to a year. They are mostly 6 months. There are very few that last for a year.

Senator YOUNG. That is not much of a long-term at all—3 months to a year. You say milk prices have been rising in the past year, even in those market areas not regulated.

Mr. BABIONE. That is correct.

Senator YOUNG. How do we know that milk prices will not fall during the next months? They have risen so much you say. How do you know they won't fall? You can't assume they are going to remain static or go up, can you?

Mr. BABIONE. No, sir, we cannot assume that.

Senator YOUNG. Do we understand that a bill identical with S. 3834 has passed in the House of Representatives?

Mr. BABIONE. Our suggested revision to the bill that was offered to the House subcommittee was reported out.

Senator YOUNG. And if the price of milk, instead of rising as it has in the past year, had dropped, you don't think the milk people would be coming in and saying they would take a lesser profit and ask for a reduction in their contract, do you?

Mr. BABIONE. Definitely not.

Senator YOUNG. Knowledgeable milk producers and handlers should know the risk they are taking, should they not—risks they take of loss as well as profit?

Mr. BABIONE. Generally speaking, yes. The problem is determining over a long period of time, over a year, what might happen to the supply-demand situation in milk.

Senator YOUNG. Yes, but if you are dealing in milk, you are knowledgeable in that line of work as you should be if you are going to enter into a contract with any Government agency. You also should know something of the pitfalls and the fact that some bureaucrat could make things tough for you. You should take that into consideration, shouldn't you?

Mr. BABIONE. Yes, sir.

Senator YOUNG. I want you to know, sir, that very definitely I am going to oppose this bill. I am going to oppose any part of it, and particularly when you talk about long-term contracts. I believe that that might be 3 years or 5 years—something really long-term. Very few of them are more than a year if any; is that right?

Mr. BABIONE. There are none more than a year.

Senator YOUNG. None more than a year. No other questions, Mr. Chairman.

Chairman RUSSELL. Senator Inouye.

Senator INOUYE. Thank you, Mr. Chairman. Mr. Babione, if this bill ever becomes law, will the Department of Defense be prepared to submit and recommend similar bills to cover other commodities under fixed price contracts?

Mr. BABIONE. I don't think I can answer that question at this time. We are concerned over the possible precedent of this type of legislation over a wide spectrum of commodities and products.

Senator INOUYE. If you are concerned about the precedent, why did you approve this?

Mr. BABIONE. We felt that this situation was unique enough in the equities of the situation that we should grant relief in the cases cited.

Senator INOUYE. Should you grant relief to cases cited by Senator Symington, let's say, if the Senate committee decides to release certain commodities in the stockpile at higher prices?

Mr. BABIONE. I would like to be able to examine the situation in each case before I would ever make a judgment as to whether it represents an abnormal risk or a normal risk. That is the problem in all of these cases.

Senator INOUYE. Over the period of let's say the last 5 years, have these contractors made a profit or a loss in their dealings with the Department?

Mr. BABIONE. We don't know, but my judgment on it would be that it is like the stockmarket. Some have made money, some have lost money. It depends on what their conditions were, and many of the things that went into the cost of producing the product.

Senator INOUYE. What you are telling us is that you are not in favor of this bill because of the precedent-setting possibilities.

Mr. BABIONE. No, sir. I am saying that we are in favor of this bill. You asked me whether we would be prepared to recommend other bills, and I said we are concerned about the precedent of this bill encouraging other bills, and we would have to examine other bills on the merits of each case.

Senator INOUYE. I would think that if you suggest this bill, I can't see how you could deny relief for other contractors dealing in other commodities, if one is thinking of equity and justice. I think we are opening up a Pandora's box. That is my personal view.

Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Byrd.

Senator BYRD of Virginia. No questions, Mr. Chairman.

Chairman RUSSELL. Any further questions?

Senator SYMINGTON. Mr. Chairman, I would read into the record a paragraph from a letter received from a creamery company. These are mostly small companies we are talking about. What this bill does is try to protect little people who don't have the setups to handle a situation of this character when it develops against them. They just can't carry that kind of overhead.

This letter says:

We are familiar with the fact that throughout Missouri and in particular Southwest Missouri, dairies are being forced to bear an unreasonable burden because they negotiated contracts earlier last spring upon estimated prices that historically were much lower than they are now. Historically, the average profit to a dairy on Defense milk contracts is about two cents a gallon. With recent increases in milk prices, several dairies in Missouri are holding contracts of six to twelve months' duration where they stand to lose five to six cents per gallon. I recognize that milk companies bear reasonable risk when they make estimates of prices, but I doubt in the current situation if anyone could have foreseen the substantial increases that have been forthcoming.

Some dairies in my State are going bankrupt as a result of this directive from the Department of Agriculture. Naturally they didn't have any idea it was coming when they made their contract.

So far as you know, assuming the figures are correct, this states the problem, does it not?

Mr. BABIONE. Yes, sir.

Senator SYMINGTON. Thank you.

Chairman RUSSELL. Is there anything further?

Senator CANNON. Mr. Chairman.

Chairman RUSSELL. Yes, Senator Cannon.

Senator CANNON. I am sorry to belabor this point. Mr. Chairman under this provision, there are some milk suppliers that on occasion bid a Defense contract at a loss, in order to take care of the surplus milk that is generated by their producers, the people that sell to them. In that type of situation, let's assume that the particular contractor provides for a contract at a loss to himself. This would increase his loss because of the milk marketing order. Now under that type of situation, would he be entitled to any relief under this provision? In other words, the contractor already was suffering a loss. He was bidding it in below his actual cost to take care of his surplus producers.

Mr. BABIONE. He would be granted relief to the extent he could demonstrate that his loss was increased by the action of the Department of Agriculture.

Senator CANNON. Thank you, Mr. Chairman.

Chairman RUSSELL. Anything further? If not, we thank you gentlemen for your testimony. There will be inserted in the record at this point a joint statement of Senator Allott and Senator Dominick and also a statement of the National Milk Producers Federation.

JOINT STATEMENT OF SENATORS GORDON ALLOTT AND PETER DOMINICK IN SUPPORT OF S. 3834

Mr. Chairman, we appreciate this opportunity to make this statement in support of our bill, S. 3834.

A situation has developed with respect to Defense Department contracts for the furnishing of fluid milk. A particular case in Colorado has brought the situation to our attention, however, we are informed that similar situations exist in other states. This particular dairy in Colorado happened to be a dairy which qualified for a Small Business set-aside under the Small Business Act of 1958, however, its contract is not a set-aside contract, as the dairy was low bidder.

As members of the Committee know, the Secretary of Agriculture, through milk marketing orders, has promulgated new milk support prices which have resulted in a price increase for bulk milk of seventy-five cents per hundredweight over the bulk price in February of this year. This amounts to more than a 13% increase in less than seven months. For example, in the eastern Colorado milk marketing order area, the bulk price for Class I milk for February was \$5.55 per hundredweight; in March it was \$5.68 per hundredweight; in April it was \$5.78 per hundredweight; for the period July 1 through July 4, the price was \$5.92 per hundredweight; for the period July 5 through July 31, the price was \$6.10 per hundredweight; for the month of August the price was \$6.15 per hundredweight; and, the present price (for September) is \$6.33 per hundredweight.

It is significant to note that the average price for 1965 was \$5.356 per hundredweight and while the price fluctuates some during the year, the price was \$5.39 for December of 1964, as compared with \$5.49 for December of 1965—merely a ten cent per hundredweight increase.

We would agree that price fluctuations attributable to the free interplay of the forces of supply and demand in the market place would be an ordinary risk of doing business; but, we believe that requiring a contractor to foresee and anticipate administrative orders by the Secretary of Agriculture is not ordinary but is extraordinary, and would require a quality of foresight that is far beyond what the Government might reasonably expect of its contractors.

An extreme hardship has been worked upon some of the dairies contracting with the Department of Defense. The small dairy in Colorado indicates that it is now losing in excess of \$15,000 per month under its contract, which was negotiated in November of 1965 and upon which performance began in January of 1966 to continue until January of 1967. The contract contains no renegotiation clause.

To deal with this problem and to help alleviate the hardship brought upon such contractors we introduced our bill, S. 3S34. We are informed that a companion measure, H.R. 17483, is presently pending in the House of Representatives.

We appreciate the Committee's expeditious action in calling hearings on this measure so late in the session; however, we feel that the circumstances are extraordinary and in light of the losses being incurred by the contractors, we fear that to defer action may seriously jeopardize their ability to survive. In the long run, the non-survival of such small contractors would be to the detriment of the Government, since it is recognized that they are instrumental in keeping costs down through competition.

Again, we wish to thank the Committee for its early consideration of this matter and for this opportunity to express our views.

STATEMENT OF THE NATIONAL MILK PRODUCERS FEDERATION

The National Milk Producers Federation is a national farm organization. It represents dairy farmers and the dairy cooperative associations which they own and operate. Through these associations, farmers act together to process and market for themselves, on a cost basis, the milk and butterfat produced on their farms.

The Federation was organized in 1916 and is celebrating its 50th anniversary this year.

Practically every form of dairy product made in the United States in any substantial volume is processed and marketed by dairy farmers in their own dairy cooperative plants.

Dairy cooperatives acting as bargaining agents for their farmer members supply the major portion of raw milk used by the dairy processing plants in the United States.

Many dairy cooperatives represented through the Federation supply substantial quantities of milk and dairy products to establishments operated by the Department of Defense. They also supply raw milk to dairy processing plants bidding on contracts to supply such establishments.

These contracts run for periods usually ranging from three months to a year and call for fixed prices for the full term of the contract.

The price of raw milk to the farmers is a primary cost factor in practically all of the items supplied under the contracts.

Bidding under the contracts is very close, and the bidders assume the risk of market price fluctuations and also the risk of changes in labor costs.

In addition, under the present system, there is a possibility, generally unpredictable, of changes in the cost of raw milk brought about by government action.

During the current year, a very sharp downturn in the total production of milk in the United States made it necessary for the government to take emergency action to increase by substantial amounts the price of milk to dairy farmers.

Whether this action will be sufficient to avert a threatened shortage still remains to be seen. It may be necessary to take additional action to stem the sales of dairy herds that are still taking place.

The price increases ordered this year have caused severe hardships to bidders on government contracts. This has served to bring home to all of us the need for price adjustments in government contracts to relieve hardships caused by price increases ordered by the government itself.

The bidders have no control over these prices, and the amount of the increases ordered this year could not reasonably have been anticipated in the bidding.

The price of milk to dairy farmers is supported at not less than 75 nor more than 90 percent of parity under the Agricultural Act of 1949 (7 U.S.C. Sec. 1446). The support price at the farm is obtained by government purchases of butter, nonfat dry milk solids, and cheese at price levels designed to return to farmers the desired support level for milk used for dairy products. Fluid milk prices ordinarily are higher. While they are not supported directly under the 1949 Act, they are supported in fact because the fluid milk prices tend to adjust to the basic support price.

On April 1, 1966, the Secretary of Agriculture increased the support level for milk to farmers from \$3.24 to \$3.50 per hundredweight.

This failed to stop the downward trend in production, and on July 1, 1966, the support level was further increased by action of the Secretary from \$3.50 to \$4.00 per hundredweight.

Prices for milk at the farm level are also controlled in Federal milk marketing orders under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. Sec. 608c (5)). Under this Act, minimum prices to farmers are prescribed for milk in

the designated marketing areas. A classified pricing system is used, with a higher price set for milk used for beverage purposes and a lower price set for milk used to make manufactured dairy products such as butter and cheese.

Prices in the Federal order markets are set by the Secretary of Agriculture after public hearings at which interested parties may appear and present statements. Here again, once the order prices are announced, the bidder has no control over them.

During the current year, the Secretary of Agriculture made sweeping decisions on three occasions to increase milk prices, or prevent scheduled decreases, throughout the system of Federal milk marketing orders. These changes affected substantially the farm price for milk, particularly that used for beverage purpose and including milk supplied under government contracts.

In addition to these increases in the order prices, the support price increases made April 1 and July 1 were reflected in the Federal order markets through the operation of pricing formulas based in varying degree on the price for manufacturing milk.

There is another area in which the cost of raw milk may be changed because of Government action. Where an increase in price support levels announced by the Secretary of Agriculture has caused an increase in class prices, including class prices administered by a state agency, for milk under contract to Federal installations, then a price adjustment should be made. Such an adjustment should be made, however, only where it can be demonstrated that the increase in price is passed through the handler to the producer supplying the milk.

In any of these cases, the only contract adjustment which would be made would be one justified by the fact that the increased cost of milk at the farm level was the result of governmental action, either state or Federal, prompted by considerations of general welfare and made in the public interest. And in the case of Federal price increases, the government would simply be adjusting its supply contracts to reflect milk cost increases which it had itself ordered.

The proposed legislation over the long run may well result in a net benefit to the government, because bidding can be closer if the risk of price change by government action is relieved by an appropriate escalation clause.

We believe the request for such a clause, plus relief for bidders caught by the government price increases made this year, is reasonable and fair, and we urge you to report legislation to accomplish these objectives.

(Subsequently, in executive session, the committee voted to report S. 3834 with amendment as covered by S. Rept. No. 1668.)

H.R. 16646

Chairman RUSSELL. The next bill is H.R. 16646, which would authorize the Secretary of Labor to issue exemplary rehabilitation certificates to persons who earlier had received military discharges that are other than honorable, if the persons could show that their post-service conduct and character have been good.

(The bill referred to follows:)

[H.R. 16646, 89th Cong., 2d sess.]

AN ACT To amend title 10, United States Code, to authorize the award of Exemplary Rehabilitation Certificates to certain individuals after considering their character and conduct in civilian life after discharge or dismissal from the armed forces, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part II of subtitle A of title 10, United States Code, is amended by inserting immediately after chapter 79 thereof the following new chapter:

"Chapter 80.—EXEMPLARY REHABILITATION CERTIFICATES

"Sec.

"1571. Establishment of Exemplary Rehabilitation Certificates.

"1572. Consideration and issuance of certificate.

"1573. Matters considered.

"1574. Other benefits.

"1575. Job counseling and employment placement.

"1576. Reports.

"§ 1571. Establishment of Exemplary Rehabilitation Certificates

"The Secretary of Labor shall act on any application for an Exemplary Rehabilitation Certificate received under this chapter from any person who was discharged or dismissed under conditions other than honorable at least three years before the date of receipt of such application.

"§ 1572. Consideration and issuance of certificate

"In the case of any person discharged or dismissed from an armed force under conditions other than honorable before or after the enactment of this chapter, the Secretary of Labor may consider an application for, and issue to that person, an 'Exemplary Rehabilitation Certificate' dated as of the date of issuance, if it is established to his satisfaction that such person has rehabilitated himself, that his character is good, and that his conduct, activities, and habits since he was so discharged or dismissed have been exemplary for a reasonable period of time, but not less than three years. The Secretary of Labor shall supply a copy of each such Exemplary Rehabilitation Certificate which is issued, to the Secretary of Defense, who shall place such copy in the military personnel record of the individual to whom the certificate is issued.

"§ 1573. Matters considered

"(a) For the purposes of section 1572, oral and written evidence, or both, may be used, including—

"(1) a notarized statement from the chief law enforcement officer of the town, city, or county in which the applicant resides, attesting to his general reputation so far as police and court records are concerned;

"(2) a notarized statement from his employer, if employed, giving the employer's address, and attesting to the applicant's general reputation and employment record;

"(3) notarized statements from not less than five persons, attesting that they have personally known him for at least three years as a person of good reputation and exemplary conduct, and the extent of personal contact they have had with him; and

"(4) such independent investigation as the Secretary of Labor may make.

"(b) Any person making application under this chapter may appear in person or by counsel before the Secretary of Labor.

"§ 1574. Other benefits

"No benefits under any laws of the United States (including but not limited to those relating to pensions, compensation, hospitalization, military pay and allowances, education, loan guarantees, retired pay, or other benefits based on military service) shall accrue to any person to whom an Exemplary Rehabilitation Certificate is issued under section 1572 unless he would be entitled to those benefits under his original discharge or dismissal.

"§ 1575. Job counseling and employment placement

"The Secretary of Labor shall require that the national system of public employment offices established under the Act of June 6, 1933 (48 Stat. 113), accord to any person who has been discharged or dismissed under conditions other than honorable but who has been issued an Exemplary Rehabilitation Certificate under this chapter special counseling and job development assistance.

"§ 1576. Reports

"The Secretary of Labor shall report to Congress not later than January 15 of each year the number of cases reviewed by him under this chapter, and the number of Exemplary Rehabilitation Certificates issued.

"§ 1577. Administration

"In carrying out the provisions of this Act the Secretary of Labor is authorized to (a) issue regulations; (b) delegate his authority; (c) utilize the services of the Civil Service Commission for making such investigations as may be mutually agreeable."

SEC. 2. The analysis of part II of subtitle A of title 10, United States Code, is amended by inserting immediately below

"79. Correction of military records.....

the following:

"80. Exemplary Rehabilitation Certificates..... 1571".

Passed the House of Representatives August 15, 1966.

Attest:

RALPH R. ROBERTS,

Clerk.

Chairman RUSSELL. I am sure that all of you who have been on this committee for any length of time will recall that in previous Congresses we have had somewhat similar legislation sponsored by the late Congressman Doyle, of California. The pending bill is different from the earlier ones in that the Department of Labor, instead of the Department of Defense, would grant the certificates.

The bill contains an express provision that no benefits would accrue to a person to whom an exemplary rehabilitation certificate is issued unless the person was entitled to those benefits under his original discharge or dismissal. The Secretary of Labor, under the bill, could also provide special job counseling and employment placement assistance to persons to whom certificates are issued.

We have been informed as to the special interests of a number of members of the other body in this bill, particularly Congressmen Bennett, of Florida, and McVicker, of Colorado, and Congressman McVicker has sent over a statement to be inserted in the record. (See page 23.)

We also have a statement from the Reserve Officers Association in support of the bill (see page 24), and a statement from the Veterans of Foreign Wars, which will appear in the record. (See page 24.)

The witness on this bill is Mr. Marshall Miller, Assistant Director for Veterans Employment, Department of Labor. We also have present from the Department of Defense, the Office of the Assistant Secretary of Defense for Manpower, Lt. Col. William A. Temple.

Mr. Miller, I assume you are going to present the statement on this bill. You may proceed.

STATEMENT OF MARSHALL C. MILLER, ASSISTANT CHIEF, VETERANS EMPLOYMENT SERVICE, DEPARTMENT OF LABOR; ACCOMPANIED BY PAUL A. TERREY, ATTORNEY, DEPARTMENT OF LABOR, AND COL. WILLIAM A. TEMPLE, OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY PERSONNEL POLICY, DEPARTMENT OF DEFENSE

Mr. MILLER. Mr. Chairman and members of the committee, I appreciate the opportunity to testify before you on H.R. 16646 authorizing the award of exemplary rehabilitation certificates to certain persons who have been discharged or dismissed from the armed services under conditions which were less than honorable.

The bill is drafted to deal with a comparatively small, but nevertheless difficult manpower problem. There are over 500,000 people in this country who have less than an honorable discharge from the Armed Forces. Figures from the Department of Defense show that 215,255 discharges were awarded under other than honorable conditions from 1957 to 1965. This is about 3.2 percent of all military discharges awarded during this span of 9 years.

It is a hard fact that many of these men have difficulty in obtaining employment or anything more than menial employment. This results

from the stigma or "black eye" which the less than honorable discharge represents. Many of the men with these discharges have employment difficulties which far exceed those which result from the commission of identical offenses by civilians. Too often, a prospective employee will lack the time, patience, or interest to do more than superficially inquire about the nature of the discharge, whether it be a dishonorable discharge, an undesirable discharge, or a bad conduct discharge. No ameliorating factors such as conduct in civilian life since the discharge are considered.

H.R. 16646 tackles the problem by permitting the Secretary of Labor to issue exemplary rehabilitation certificates. The holder of a certificate is entitled to special counseling and job development assistance in the numerous public employment offices established under the Wagner-Peyser Act. A copy of the certificate is sent to the Secretary of Defense for placement in the holder's military personnel record. Perhaps most importantly, however, is the fact that the holder of a certificate has tangible and objective evidence as to his rehabilitation for presentation to a prospective employer. This should be of some help in breaking existing prejudices to which I have already alluded.

The value of the certificates will depend in large part upon how carefully they are issued. They would not be given lightly. The bill contemplates the following:

1. At least 3 years must elapse between the military discharge and the date the young man applies to the Secretary of Labor for a certificate.

2. The Secretary must consider relevant evidence which would establish to his satisfaction that the person has: (a) rehabilitated himself, (b) that his character is good, and (c) that his conduct, activities, and habits since he was discharged have been exemplary. This evidence would be written or oral, and could include such documentary evidence as (1) a notarized statement from the chief law enforcement officer of the community where the applicant resides attesting to this general reputation so far as police and court records are concerned; (2) a notarized statement from his employer, if any; (3) notarized statement from not less than five persons attesting that they have personally known him for at least 3 years as a person of good reputation and exemplary conduct, and the extent of their personal contact with him; and (4) any evidence which the Secretary might obtain under discretionary authority to make an independent investigation of the application. The Secretary of Labor's investigation would use the services of the Civil Service Commission under mutually agreeable arrangements.

Any increased costs occasioned by the bill may be considered negligible. Although the problem involved is serious, it is not large.

The bill does not in any way alter existing law regarding veterans' benefits for pensions, compensation, hospitalization, et cetera. This should be emphasized.

Mr. Chairman, I would like to depart from my prepared statement for a minute if I may. I do not feel that we should confuse the image of a veteran with certain preferences afforded by law with the image of the veteran with less than an honorable discharge seeking proof of his rehabilitation and trying to solve his serious employment problem.

As indicated earlier, I am here as a representative of the Department of Labor, and am expressing its views on a bill designed to remedy a manpower problem in a practical way. I am not here as a moralist. Yet, in closing I am reminded of the Biblical observation that man is lower than the angels. He makes mistakes, particularly when he is young and has been impeded by a background of poverty or deprivation. That he be permitted to correct his mistakes and contribute fully to society is one of the tenets of our culture and our Nation.

Time has not permitted us to obtain the view of the Bureau of the Budget on this statement. That is my statement, Mr. Chairman.

Chairman RUSSELL. Lt. Col. William A. Temple is here, and his statement is one page in length, and before each Senator asks questions, his statement indicates that the Department of Defense recognizes this problem and has no objection to this bill. I will have that statement printed in the record.

(The statement referred to follows:)

**STATEMENT OF LIEUTENANT COLONEL WILLIAM A. TEMPLE, OFFICE OF THE
DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY PERSONNEL
POLICY**

Mr. Chairman and Members of the Committee, I am Lieutenant Colonel William A. Temple, Executive for Disciplinary and Separation Matters in the Office of the Deputy Assistant Secretary of Defense for Military Personnel Policy.

The Department of Defense is fully aware of the seriousness of the problem created in civilian life for an individual who has received an other than honorable discharge. We recognize, also, that in many instances an individual with the desire to do so can overcome the effects of a period of misconduct and take a useful place in society.

The Department has, therefore, no objection to the award of an exemplary rehabilitation certificate attesting to a period of demonstrated rehabilitation in his civilian community following separation from the military service. We would likewise have no objection to incorporating a copy of each certificate in the individual's permanent personnel file within the appropriate Military Department.

The Department of Defense believes that the bill before you properly places the function of issuing such certificates in a civilian agency and understands that the Department of Labor stands ready to assume it. We defer, of course, to the views of that Department on the substance of H.R. 16646 as it relates to the performance of that function.

Thank you, Mr. Chairman. This concludes my statement.

Chairman RUSSELL. Senator Saltonstall.

Senator SALTONSTALL. Mr. Chairman, the only question that I have is it seems to me that this bill may go awfully far in requiring the man in question to get certain certificates, notarized statements, before he can qualify before the Secretary of Labor—five statements from people, notarized, from his employer, and from the chief law officer of enforcement in the city or town.

In a big city, such as St. Louis, Portland, Maine, Atlanta, Ga., or Boston, it is pretty hard for the chief law enforcement officer to be able to give a certificate, we will say, to me, if I am a citizen of the city of Boston, with its some 700,000 people there. Shouldn't you qualify that in some way?

Mr. MILLER. Senator Saltonstall, I think inherent in the provisions is an elasticity. In other words, this is discretionary in terms of a number of statements or the number of people, or even who is to supply the evidence. Certainly we would expect that the local employment office and the people handling this would proceed on the basis of the situation as it appeared.

Senator SALTONSTALL. May I ask one more question. In administering this act, you want to use the services of the Civil Service Commission. Do they approve of the act?

Mr. MILLER. I am informed that we understand they have no objections.

Senator SALTONSTALL. No objections.

Mr. MILLER. That is right.

Senator SALTONSTALL. They have been consulted.

Mr. MILLER. Yes, sir. They were consulted when the House considered the bill.

Senator SALTONSTALL. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Symington.

Senator SYMINGTON. I would ask one question. You say you have had over 500,000 less than honorable discharges. Then you put them in categories, "dishonorable discharge, undesirable discharge, bad conduct discharge." Have you the figures as to what number of the 500,000 come into each of those categories?

Mr. MILLER. I do not at this point, sir. I will be very happy to get it.

Senator SYMINGTON. Would you supply that for the record?

Mr. MILLER. I will be happy to. (See p. 23.)

Senator SYMINGTON. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Cannon.

Senator CANNON. Doesn't this also include the so-called "general" discharge?

Mr. MILLER. Any discharge other than honorable.

Senator CANNON. So it would take care specifically of those who have a general discharge who are really the lightest offenders, if they are considered offenders.

Mr. MILLER. I am not sure.

Senator CANNON. I have seen many instances myself where these young boys have been in the service and gotten so many "black marks" let's say the first year that with exemplary conduct after that time were still unable to get an honorable discharge, and yet they can't go to work for any of the classified agencies of the Federal Government now because of that situation.

With this type of a certificate, would this enable a man to qualify let's say for a clearance for any of the classified agencies?

Mr. MILLER. When it gets into the field of classified agencies, this is a matter which I couldn't answer at this time. The real emphasis, gentlemen, if I can resort to the actual field experience, is there is nothing that this boy has that he can take in his hand, or a girl, as far as that is concerned, to a prospective employer.

We do not want to confuse this issue. It in no way, shape, or form relates to veterans' benefits. This is not the point. This boy is suffering under a stigma, and one which is very real, and in some people's minds proper. But here is a problem of trying to create for him an opportunity to regain his dignity and to become a self-supporting citizen in his community, and this bill has had the support of Secretary Wirtz from the start, and we recommend it to you for your consideration.

Senator CANNON. I have nothing further, Mr. Chairman.

Chairman RUSSELL. Senator Young.

Senator YOUNG. Mr. Chairman, carrying it a little further, Senator Cannon's observations, it appears to me that all of us know about the way things are run in the Armed Forces, that in some outfits the stigma that is attached, or perhaps a dishonorable discharge might be given out in some outfits while in another outfit they are given an undesirable or a bad conduct discharge. There is a great diversity in punishment in these matters in the branches of the services in different outfits.

Mr. MILLER. I will have to confer with the Department on that, Senator. Actually, if I could say this to you, we don't want to confuse this. We are not attempting to change the character of the discharge.

Senator YOUNG. I understand that.

Mr. MILLER. I think your observations, sir, are accurate.

Senator YOUNG. Personally, I think this is a very good bill. I will be glad to support it. It will be very helpful to a lot of youngsters who perhaps got off with a bad start. I think this is just as good a bill as the bill we just considered was a bad bill, where it wants the Government to guarantee to the milk dealers in Ohio—and we have a lot of them and some of them have written me—want us to legislate to guarantee them a profit in getting a 6-month or a 12-month contract.

I will vote against the last bill, but I will enthusiastically support this bill. That is all I have.

Chairman RUSSELL. Senator Inouye.

Senator INOUYE. No questions, Mr. Chairman.

Chairman RUSSELL. Senator Byrd.

Senator BYRD of Virginia. Thank you, Mr. Chairman. It seems to me this is a very desirable and perhaps necessary piece of legislation. Let me ask you this question, if I may. I note here that during the past 8 years, the number of discharges, less than honorable discharges was 3.2 percent. Is that considered about normal, more or less?

Mr. MILLER. The answer is "Yes", Senator.

Senator BYRD of Virginia. I would have thought 3.2 percent would be high. You feel it is normal?

Mr. MILLER. Yes, sir.

Senator BYRD of Virginia. Thank you, Mr. Chairman.

Chairman RUSSELL. Do any further questions occur to any other members of the committee?

Senator SYMINGTON. Mr. Chairman, I would, if I may.

Chairman RUSSELL. I want to clarify the record. A general discharge is not a dishonorable discharge. It is considered as an honorable discharge, and it does not deny the recipient of any of his rights as an exserviceman.

Senator CANNON. Mr. Chairman, I think the general discharge is considered as a discharge other than honorable.

Chairman RUSSELL. It is considered as an honorable discharge. An undesirable discharge is considered as one under conditions other than honorable, but a general discharge is often given in cases where the man just doesn't have the mental capacity to be a soldier or a sailor. I am quite sure I am right about that.

Senator CANNON. I just handled one where the man can't get a job working for the AEC because he has a general discharge.

Chairman RUSSELL. Well, that may well be, because the general discharge shows that the service thought there was something wrong

with him, either mentally or otherwise, or from the standpoint of character, but it does not even bar him from veterans' benefits if he is entitled to them otherwise.

Senator CANNON. Would a general discharge come under this category? Would they be included in this?

Chairman RUSSELL. I don't know whether they would, or not. It wouldn't be necessary because it is not a dishonorable discharge.

Mr. MILLER. Mr. Chairman, could we refer this to Colonel Temple.

Chairman RUSSELL. Yes, Colonel.

Colonel TEMPLE. Sir, a general discharge is a general discharge under honorable conditions. This bill deals with discharges other than under honorable conditions.

Chairman RUSSELL. This bill would not affect them at all, because this is considered to be under honorable conditions.

Senator BYRD of Virginia. Mr. Chairman, may I ask Colonel Temple a question in that connection?

Chairman RUSSELL. Yes.

Senator BYRD of Virginia. The 500,000 involved in this, or 3.2 percent, there is no general discharge included in that figure?

Colonel TEMPLE. That is correct, sir. This reflects undesirable, bad conduct, and dishonorable discharges.

Senator BYRD of Virginia. Thank you.

Chairman RUSSELL. Senator Symington has another question.

Senator SYMINGTON. In the theory of it, Colonel, if a general discharge is an honorable discharge why give him the stigma of not having an honorable discharge?

Colonel TEMPLE. Sir, in effect, although it is perhaps an oversimplified analogy, a general discharge is A, B, C, or D grade, where an honorable discharge reflects an A grade for a man who has faithfully performed his service to his country in an outstanding manner.

Senator SYMINGTON. I am very sympathetic with what Senator Cannon said, however. It seems to me you stigmatize a man who could be a good man. I don't understand the difference. When did the general discharge aspect come up, the law?

Colonel TEMPLE. Sir, I would have to research the point historically, but the general discharge has been in effect at least 10 years.

Chairman RUSSELL. The general discharge is usually given, I believe it is said, for the convenience of the Government; is it not?

Colonel TEMPLE. It is given under a variety of circumstances, sir. Convenience of the Government is one.

Senator SYMINGTON. So you don't draft say the world's champion heavyweight for reasons you know more about than I do, but if you did draft him you would give him a general discharge because his mental capacity wasn't up to—

Colonel TEMPLE. No, not necessarily.

Chairman RUSSELL. Not necessarily at all.

Colonel TEMPLE. If his service were up to the best of what he was capable, and he wasn't guilty of a substantial amount of minor misconducts, he might very well earn an honorable discharge.

Senator SYMINGTON. I have so many more questions, Mr. Chairman, I will pass.

Senator INOUYE. Mr. Chairman.

Chairman RUSSELL. Senator Inouye.

Senator INOUYE. Colonel Temple, what are some of the circumstances for a general discharge?

Colonel TEMPLE. Sir, a general discharge may be issued for discharges for unsuitability. I might refer specifically to the Department of Defense directive on the subject.

Mr. MILLER. Mr. Chairman, I was just going to say a statement could be included as to general discharges.

Chairman RUSSELL. I have no objections. There are any number of reasons why the general discharge is used, instead of one under honorable conditions. It is sort of a second-class discharge but not a bad conduct discharge, often given where a man has committed a number of petty offenses, and the service thinks that he is perhaps not all there mentally, and they don't want to try him and court-marshal him, and they just discharge him for the convenience of the Government.

Any further questions? Thank you, gentlemen.

(A statistical table of discharges follows:)

Department of Defense

Fiscal year	Total	Total discharges (all services)									Total, other than honorable and general
		Honor-able	Per-cent	General	Per-cent	Unde-sirable	Per-cent	Bad conduct	Per-cent	Dis-honor-able	
1957-----	803,859	743,050	92.4	123,371	2.9	27,786	3.5	6,633	0.8	3,019	0.38
1958-----	866,153	798,761	92.2	127,379	3.2	31,460	3.6	6,714	.8	1,839	.21
1959-----	761,004	710,534	93.4	120,636	2.7	23,491	3.1	5,331	.7	1,012	.13
1960-----	2,614,190	566,142	92.2	26,433	4.3	16,239	2.6	4,327	.7	749	.12
1961-----	658,009	611,849	93.0	27,148	4.1	14,601	2.2	3,742	.6	669	.10
1962-----	683,074	638,284	93.4	27,528	4.0	13,219	1.9	3,361	.5	682	.10
1963-----	710,881	668,666	94.1	25,069	3.5	13,555	1.9	3,053	.4	538	.08
1964-----	787,289	745,961	94.8	24,325	3.1	13,757	1.7	2,799	.4	447	.06
1965-----	730,598	688,889	94.3	25,477	3.5	13,199	1.8	2,721	.4	312	.04
Total-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	215,255

¹ Marine Corps general discharges unavailable.

² Total Marine Corps exceeds detail items by 300.

STATEMENT OF ROY H. MCVICKER, MEMBER OF CONGRESS, SECOND DISTRICT OF COLORADO

I am here to emphasize my strong feelings in support of H.R. 16646 to provide exemplary rehabilitation certificates to veterans with less than honorable discharges. Earlier this year I introduced a bill, almost identical to H.R. 16646. I would like to join with my distinguished colleague, the Honorable Charles E. Bennett of Florida, in urging your favorable consideration of his excellent bill.

A questionable detachment from our armed services represents a black cloud which hangs over a man for the rest of his life. He carries a stigma wherever he goes. People in his community turn their backs upon him. Our Federal Government will not help him, while it gladly and gratefully aids other veterans. Even his wife and children know there is shame in his past. Some men may successfully hide their pasts from others, yet they know within themselves that their record is not something to take pride in.

This is the plight of a half million men and women in our country. How tragic that a man cannot rid himself of this blot, regardless of how admirable a life he leads. I am not saying dishonorable discharges are handed out unjustly or indiscriminately. But many times offenders are young and immature men, who are sorry soon after. Other youths in civilian life or at college are forgiven deeds which are less rapidly forgiven in a soldier. No, injustice is not the point, though we all know unjust decisions occur in military courts as well as in civilian.

My point is that a rehabilitated person deserves an opportunity to clear his record of old stains. A man who has owned up to his past mistakes and overcomes

his weaknesses, deserves a chance to erase this last enduring obstacle to advancement. An exemplary rehabilitation certificate holds out this hope.

Our bill would have the Secretary of Labor appoint review boards which would pass judgment on applications for these certificates. They would not be given out lightly. Three years would have to elapse before any application would be in order. Evidence of rehabilitation would have to be strong. Acceptable evidence would include notarized statements from the chief law enforcement officer of the applicant's community, from his employer, and from people who have known him well. The reviewing board would use these statements and its own independent investigations to determine an applicant's reliability, good character, and general reputation.

If the decision of the board is favorable, an applicant's military personnel record would thereafter include a copy of his certificate. He would not become eligible for Federal benefits which would be his under an honorable discharge. However, he would be given job counselling and help in finding a job. He would be a prouder man through the effort he had made to reform himself.

The days are rapidly disappearing when men can be branded for one mistake, and victims of circumstance shoved aside without compassion. Congress has an important task to help people help themselves in achieving a full measure of dignity. I urge Congress to endorse these certificates for they reflect concern for this task.

STATEMENT OF COLONEL JOHN T. CARLTON, EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

Mr. Chairman and members of the committee, we appreciate this opportunity to express our views to you concerning H.R. 16646, a Bill introduced and supported by The Honorable Charles E. Bennett, Congressman from Florida, to authorize the award of Exemplary Rehabilitation Certificates to certain veterans of the military services.

We strongly support this Bill and recommend that it be favorably considered by your Committee.

A number of attempts have been made to pass similar legislation in the past, but we are pleased to find support both from the Department of Defense and Department of Labor for this particular Bill.

This Bill would open up the door to gainful employment to many men, whose youthful indiscretions and carelessness has, in the past resulted in a discharge from the Armed Services under other than honorable conditions, yet whose exemplary conduct since that time gives positive evidence of having gained the maturity to take this rightful place in society.

This is entirely in the American tradition. Further, in addition to affording a real chance of rehabilitation to those who deserve it, the Bill aids our economy by providing gainful employment to a significantly large group of persons on the labor market.

For the foregoing reasons, we recommend this Bill to your Committee and urge its enactment.

VETERANS OF FOREIGN WARS OF THE UNITED STATES,
Washington, D.C., September 26, 1966.

Hon. RICHARD B. RUSSELL,
Chairman, Armed Services Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to H.R. 16646, which has been approved by the House, and referred to your Committee for further consideration.

H.R. 16646 will establish Exemplary Rehabilitation Certificates to be furnished to any person discharged or dismissed from the Armed Forces under conditions other than honorable upon being able to establish that he has rehabilitated himself and that his character, conduct, and other characteristics have been exemplary for the last three years.

The bill in no way alters, amends, or allows any veterans' benefits. It confers no new rights, privileges, or preferences to these persons because of the granting of the Exemplary Rehabilitation Certificates.

Further and most important to the Veterans of Foreign Wars of the United States is that the bill, as amended by the House, struck out a section of the bill which would have given the responsibility of rehabilitating these less than honorably discharged veterans to the Veterans Employment Service of the Department of Labor. Since the early 1930s under authority conferred by the Wagner-

Peyser Act, honorably discharged war veterans of this nation have been provided job counseling and assistance when in need of employment. This veterans preference was further expanded and refined with the passage of the GI Bill of Rights of 1944. It was again reaffirmed and approved by the two succeeding GI Bills for the Korean war veterans and most recently the so-called Cold War GI Bill.

The bill, therefore, as it was passed by the House was amended to conform to all V.F.W. recommendations. Consequently, H.R. 16646 has the approval of the Veterans of Foreign Wars in that we have no objections to the bill.

Should your Committee hold hearings or have other formal consideration of this bill, then it is hoped and strongly recommended that if the bill is reported to the full Senate that the section of the bill relating to veterans' benefits provide that there shall be no special veterans' benefits accrue to the veteran by reason of his obtaining of the certificate.

Secondly, it is recommended that in no event shall the Veterans Employment Service of the Department of Labor be utilized in the rehabilitation program contemplated by this bill. The Veterans Employment Service was created to render counseling and assistance to honorably discharged veterans and for that reason it is hoped that this bill will in no way alter or change that policy.

Your favorable consideration of these views will be deeply appreciated by the membership of the Veterans of Foreign Wars.

With kind regards, I am,

Sincerely,

FRANCIS W. STOVER,

Director, National Legislative Service.

(Subsequently, in executive session, the committee voted to report H.R. 16646, with an amendment, as covered by S. Rept. 1669.) T

H.R. 9916

Chairman RUSSELL. The next bill is H.R. 9916. This bill would permit the sons of Reserve officers on active duty to compete for Presidential appointments to the military academies, and it would permit the sons of members who were killed or totally disabled in line of duty to compete under a quota for sons of deceased veterans. This quota is now limited to sons of veterans of World Wars I and II or Korea.

(A copy of the bill referred to follows:)

[H.R. 9916, 89th Cong., 2d sess.]

AN ACT To amend title 10, United States Code, with respect to the nomination and selection of candidates for appointment to the Military, Naval, and Air Force Academies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 10, United States Code, is amended as follows:

(1) Sections 4342(a)(1), 6954(a)(1), and 9342(a)(1) are each amended as follows:

(A) By inserting "or have a service-connected disability rated at not less than 100 per centum resulting from," after "died of", and by striking out "active service" and all that follows through "1955" and inserting in lieu thereof "active service."

(B) By inserting "or disability, and the percentage at which the disability is rated," after "death" in the last sentence thereof...

(2) Sections 4342(a)(2), 6954(a)(2), and 9342(a)(2) are each amended by inserting before the period at the end thereof "or, if there is no Vice President, by the President pro tempore of the Senate".

(3) Sections 4342(b)(1), 6954(b)(1); and 9342(b)(1) are each amended to read as follows:

"(1) one hundred selected by the President from the sons of members of an armed force who—

"(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

"(B) are, or who died while they were, retired with pay or granted retired or retainer pay, other than those granted retired pay under section 1331 of this title; however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause."

(4) Section 4342(b)(3) is amended by striking out "the Army Reserve" and inserting in place thereof "reserve components of the Army".

(5) Section 9342(b)(3) is amended by striking out "the Air Force Reserve" and inserting in place thereof "reserve components of the Air Force".

SEC. 2. Notwithstanding any other provision of law, none of the additional appointments authorized in sections 4342(b)(1), 6954(b)(1) and 9342(b)(1) as provided by this Act shall serve to reduce or diminish the number of qualified alternates from congressional sources who would otherwise be appointed by the appropriate service Secretary under the authority contained in sections 4343, 6956, and 9343 of title 10, United States Code.

Passed the House of Representatives July 18, 1966.

Attest:

RALPH R. ROBERTS,
Clerk.

Chairman RUSSELL. The witness on this bill is Lt. Col. William J. Mahon, Chief of the Air Force Academy Activities Branch. All right, Colonel.

STATEMENT OF LT. COL. WILLIAM J. MAHON, CHIEF, AIR FORCE ACADEMY ACTIVITIES GROUP, DIRECTORATE OF PERSONNEL TRAINING AND EDUCATION, DEPUTY CHIEF OF STAFF, PERSONNEL, HEADQUARTERS, U.S. AIR FORCE; ACCCOMPANIED BY LT. COL. F. G. ROCKWELL, OFFICE OF THE DEPUTY CHIEF OF STAFF FOR PERSONNEL, DEPARTMENT OF THE ARMY; COMDR. DONALD A. SMITH, HEAD, NAVAL ACADEMY MIDSHIPMAN'S BRANCH, BUREAU OF NAVAL PERSONNEL, DEPARTMENT OF THE NAVY; AND LT. COL. CHARLES C. ANDERSON, DEPUTY REGISTRAR, AIR FORCE ACADEMY, DEPARTMENT OF THE AIR FORCE

Colonel MAHON. I have other people accompanying me this morning. From the Army, Lt. Col. Frederick G. Rockwell, chief of the OCS, Military Academy Branch, deputy chief of staff, Personnel, Headquarters, U.S. Army. We have Comdr. Donald A. Smith from the Navy. He is the head of the Naval Academy Midshipman's Branch, Bureau of Naval Personnel, U.S. Navy. From the Air Force we have Lt. Col. Charles C. Anderson, the deputy registrar of the U.S. Air Force Academy.

Chairman RUSSELL. We have a degree of unification with respect to this bill. You may proceed, Colonel.

Colonel MAHON. I appreciate the opportunity to appear before you today to testify on behalf of the Department of Defense on H.R. 9916, to amend title 10, United States Code, with respect to the nomination and selection of candidates for appointment to the Military, Naval, and Air Force Academies.

In summary, this bill includes provisions which will:

- Establish eligibility in the sons of deceased veterans category for sons of members of the Armed Forces who died or were 100-percent disabled as a result of active service.

2. Establish authority for the President pro tempore of the Senate to nominate candidates for vacancies available to the Vice President, if there is no Vice President.

3. Establish eligibility in the Presidential category for sons of all career members of the Armed Forces who are on active duty and have been continuously on active duty for 8 years, or who are retired or who die while retired, and to enlarge the quota in this category at each academy from 75 to 100 per year.

4. Clarify the eligibility in the Reserve category for members of the National Guard, of the Army, and Air Force.

I will discuss each of these proposed changes separately.

The Department of Defense favors extending the eligibility in the sons of deceased veterans category to sons of veterans who are 100-percent disabled, and to sons of veterans who are killed or disabled as a result of active duty. This will include sons of veterans killed or disabled in time of declared war, in time of cold war such as Korea or Vietnam and in peacetime. The families of those servicemen who are killed or disabled in line of duty during peacetime suffer the same hardships and are handicapped to approximately the same extent as the families who have suffered the loss of a husband and father in combat.

The Department of Defense believes it to be both logical and proper that our country afford the same opportunity to these young men that they afford to the sons of men who are killed or disabled in time of war. The determination of the Veterans' Administration as to service connection of the cause of death as well as the percent of disability will be binding upon the service Secretaries.

Little discussion is needed on the proposed change allowing the President pro tempore of the Senate to nominate candidates for vacancies authorized to the Vice President on those rare occasions when there is no Vice President. It parallels other arrangements to continue the functions of this office. The Department of Defense supports this change.

Another provision of this proposed bill would recognize the valuable service rendered by career members of Reserve components who are on active duty, making their sons eligible to compete for appointment in the Presidential category in the same manner as sons of Regular members. For many years, members of Reserve components of the armed services have been serving their country side by side with members of the Regular Establishment. Historical precedent in law has established 8 years of continuous active duty as a basis for considering a member of the armed services to be in a career status. The bill also provides eligibility for sons of those members who retired or died while retired.

The Presidential nomination category is already quite competitive. As the bill would increase the number of young men eligible in this competition, it also increases the number of annual vacancies for each academy from 75 to 100. Theoretically, this would increase the total authorized strength of each academy from 4,417 to 4,517.

It is not the intent of this bill, however, to increase the total number of cadets or midshipmen actually attending an academy. Existing and planned facilities are geared to the maximum presently authorized by law. To offset the proposed increase of up to 25 per year, there will be a corresponding decrease in the number of young men appointed

in either the Regular or Reserve category, or appointed to fill these vacancies allocated to the service Secretaries. In no instance will the additional 25 Presidential appointees diminish the 75 percent of the secretarial qualified alternates that must come from those young men nominated by Members of Congress.

The Department of Defense supports an expansion of the Presidential category to include sons of all career members of the armed services and the increase in the quota from 75 to 100.

The current law states that the Secretaries may nominate members of the Army and Air Force Reserve. The proposed changes in H.R. 9916 amend the language to read "Reserve components of the Army," and "Reserve components of the Air Force." The purpose of this technical change is to insure that members of the respective National Guards are eligible for competition to the academies in the Reserve category. The Department of Defense supports this change.

It has been a pleasure to appear before this committee today.

I shall be happy to answer any questions you may have.

Chairman RUSSELL. Colonel, section 2 under this title, as I understand it, is designed to protect the congressional appointments from any encroachment.

Colonel MAHON. Yes, sir.

Chairman RUSSELL. But this new category authorizes an additional 25 for each service academy.

Colonel MAHON. That is right, sir.

Chairman RUSSELL. Where will they come from? Who will you diminish to get these 25 extra?

Colonel MAHON. The Secretarial qualified alternates.

Chairman RUSSELL. In other words, this will come out of those alternates which he calls up.

Colonel MAHON. Yes, sir.

Chairman RUSSELL. To fill in. None of the schools are now up to fully authorized strength, are they?

Colonel MAHON. The Navy is, sir.

Chairman RUSSELL. Pardon?

Colonel MAHON. The Navy is almost up to full strength.

Chairman RUSSELL. The Navy is almost?

Colonel MAHON. Right, sir. The Army is not and the Air Force is not.

Chairman RUSSELL. There would be no difficulty in handling these extra 25 cadets at each academy?

Colonel MAHON. No, sir.

Chairman RUSSELL. Senator Saltonstall.

Senator SALTONSTALL. Mr. Chairman, just two or three questions. I assume that you mean by this that if a man is in the service, and we will say he is run over by a truck, or is killed in an airplane accident or something of that character in peacetime, his son would be qualified.

Colonel MAHON. Yes, sir, he would be eligible.

Senator SALTONSTALL. That would have to be certified by the Department of Defense.

Colonel MAHON. By the Veterans' Administration, sir.

Senator SALTONSTALL. Now there is one thing that I question a little bit, perhaps sentimentally as much as anything else. You have given the President pro tempore of the Senate the appointments of the Vice President. Now personally, perhaps by way of sentiment

or in any other regard, I hate to think that we will have no Vice President because that means either that he is killed or died.

Shouldn't those appointments lapse for a year or two years? I just don't like the idea of providing for a President to be assassinated, or for a Vice President to die.

Colonel MAHON. We do not either, sir.

Chairman RUSSELL. As a matter of fact, it was put in there because the President was killed, wasn't it?

Colonel MAHON. Yes, sir.

Chairman RUSSELL. And the vacancies couldn't be filled, I don't see any objection to it personally.

Senator SYMINGTON. Neither do I.

Senator SALTONSTALL. I say it is purely from sentiment as much as anything. I don't like the idea. I think those are the only two questions I have. The Reserve officer would have to be serving for 8 years.

Colonel MAHON. Eight years, sir.

Senator SALTONSTALL. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Symington.

Senator SYMINGTON. Thank you, Mr. Chairman. What is the definition of 100-percent disability?

Colonel MAHON. That is decided by the VA, sir.

Senator SYMINGTON. By whom?

Colonel MAHON. The Veterans' Administration.

Senator SYMINGTON. Why aren't the Army and Air Force Academies up to full strength?

Colonel MAHON. The Army and Air Force are on their way up now, sir. Actually, the physical facilities would not handle the increase.

Senator SYMINGTON. Is it the physical facilities?

Colonel MAHON. Yes, sir.

Senator SYMINGTON. When do you expect that to be cleared up?

Colonel MAHON. Approximately 1969, sir.

Senator SYMINGTON. For both?

Colonel MAHON. We expect our first full complement of cadets in 1971, and the Army expects theirs in 1972.

Senator SYMINGTON. The Navy has been pretty tight on space down at Annapolis, but they seem to have been able to work it out.

Colonel MAHON. Yes, sir.

Senator SYMINGTON. This bill would not in any way preclude competition, would it? If these men are given a chance, they will have no better chance than anybody else?

Colonel MAHON. No, sir.

Senator SYMINGTON. They are just given the opportunity, is that correct?

Colonel MAHON. Right, sir.

Senator SYMINGTON. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Cannon.

Senator CANNON. No questions, Mr. Chairman.

Chairman RUSSELL. Senator Young.

Senator YOUNG. No questions, Mr. Chairman.

Chairman RUSSELL. Senator Inouye.

Senator INOUYE. Mr. Chairman. When you speak of retired members, do you cover persons retired because of disability also?

Colonel MAHON. Yes, sir.

Senator INOUYE. I realize this matter is not in the bill, Mr. Chairman, if I may bring up this subject, I recall quite some time ago the administration submitting a bill authorizing the Secretary of Defense and the Secretary of State to nominate young men from selected foreign countries for admission to the service academies. Would you object to including it in this bill?

Colonel MAHON. No, sir.

Senator INOUYE. I have no further questions.

Chairman RUSSELL. Thank you very much.

Any further questions by members of the committee? If not, we thank you very much for your presence here.

Colonel MAHON. Thank you.

(Subsequently, in executive session, the committee voted to report H.R. 9916 without amendment, as covered by S. Rept. 1670.)

H.R. 7973

Chairman RUSSELL. The next bill on the agenda this morning is H.R. 7973, which would permit certain civilian instructors at the Military Academy to occupy public quarters without charge.

(The bill referred to follows:)

[H.R. 7973, 89th Cong., 2d sess.]

AN ACT To amend section 4339 of title 10, United States Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4339 of title 10, United States Code, is amended to read as follows:

“§ 4339. Organist and choirmaster; civilian instructors in departments of foreign languages and tactics: quarters, fuel, and light

“(a) The organist and choirmaster of the Academy is entitled to public quarters without charge when they are available, and to fuel and light without charge when he occupies public quarters.

“(b) The civilian instructors in the departments of foreign languages and tactics are entitled to public quarters without charge and fuel and light therefor without charge.”

SEC. 2. This amendatory Act shall be effective as of October 29, 1949.

Passed the House of Representatives August 1, 1966.

Attest:

RALPH R. ROBERTS,
Clerk.

Chairman RUSSELL. The witness to present this bill is Lt. Col. Frederick G. Rockwell from the Office of the Army Deputy Chief of Staff for Personnel.

You may proceed colonel.

STATEMENT OF LT. COL. FREDERICK G. ROCKWELL, OFFICE OF THE DEPUTY CHIEF OF STAFF FOR PERSONNEL, DEPARTMENT OF THE ARMY

Colonel ROCKWELL. I am Lt. Col. Frederick G. Rockwell, Office of the Deputy Chief of Staff for Personnel, Department of the Army. The Department of the Army has been designated as the representative of the Department of Defense for this legislation. I represent the Department of the Army for that purpose.

I have a brief prepared statement which I would like to present to the committee. The purpose of the proposed legislation is to entitle the organist and choirmaster and the civilian instructors in the departments of foreign languages and tactics at the U.S. Military Academy to public quarters without charge when they are available and to fuel and light without charge when quarters are occupied.

The existing law, section 4339, title 10, United States Code, provides that the organist and choirmaster of the Academy and the civilian instructors in the departments of foreign languages and tactics are entitled to public quarters when they are available and to fuel and light therefor. Until January 1963 this law was interpreted by the Department of the Army to authorize quarters, fuel and light without charge to the individuals in question.

On 17 January 1963 the Comptroller General of the United States ruled that the compensation of each of the employees in question must be reduced by the reasonable value of the Government quarters furnished. This was based on an interpretation that the effect of Public Law 429, 81st Congress, the Classification Act of 1949, was to require that the compensation of the Government employees in question be reduced by the reasonable value of quarters furnished so that the total compensation, cash and value of allowances furnished in kind, does not exceed the Classification Act rate for the position. The civilian instructors and the organist were hired with the understanding that the quarters, heat and light would be furnished without charge, but since February 1963 they have been losing the value of the quarters rental, heat and light from their pay. This situation has caused two employees to seek employment elsewhere, and others have indicated a desire to leave if they do not receive relief.

The Department of the Army on behalf of the Department of Defense assumes that the enactment of H.R. 7973 will reaffirm the congressional intent as established by section 4339, title 10, and provide authority to furnish quarters, heat and light without charge to the organist and choirmaster and the civilian instructors in the departments of foreign languages and tactics at the U.S. Military Academy. For the foregoing reasons, the Department of the Army on behalf of the Department of defense recommends that the bill be favorably considered.

I have appreciated the opportunity of appearing before the committee and shall be happy to answer any questions you may have on this bill.

Chairman RUSSELL. I have one. I don't understand this section 2 on page 2, where it says "This amendatory act shall be effective as of October 29, 1949." That is one of the most retroactive acts I have ever seen in my experience of the Congress.

Colonel ROCKWELL. Yes, sir, I appreciate your concern. However, I think I can explain the technical language here. The Classification Act of 1949 is the basis for the Comptroller General's decision. Technically, we propose to make the bill retroactive to that date so that during the period 1949 to 1963, when these individuals in question did in fact receive quarters, heat and light free, based on the Army's determination, that they would not now be subject to payment to the Army to make up for this amount that they had received.

In other words, we just want to protect the individual, sir, during that period.

Chairman RUSSELL. I am not as much concerned about getting money out of the individual as I am the individual coming in and presenting some bill for commutation of quarters or allowances.

Colonel ROCKWELL. Yes, sir. For the period 1949 to 1963, the individuals were provided quarters, heat, and light.

Chairman RUSSELL. How about from 1963 to date?

Colonel ROCKWELL. From 1963 to the present date, based on the Comptroller General's decision, there could be a claim against the Government. This claim would amount to some \$60,000 to \$70,000 for that period.

Chairman RUSSELL. I can't approve of this bill with that retroactive provision. I think they should have this right, but I am not going back to pay \$60,000 or \$70,000, so far as I am concerned.

Colonel ROCKWELL. Sir, if I may state, the basic rationale by the Department of the Army and the Department of Defense was that these people were hired with an understanding that they would receive free quarters, light, and heat. This has been, by administrative action, denied them. Hence they have been losing this money since 1963. So, for those people who were hired prior to that time, it is in a sense a breech of contract on the part of the Department of the Army.

Chairman RUSSELL. They have known it and they didn't leave. They weren't enlisted. They weren't officers. They didn't have to resign from the Army. They could have quit any day they wanted to, couldn't they?

Colonel ROCKWELL. That is correct, sir. However, I believe that it is in the best interests of the Academy that they did remain, since these people are highly qualified individuals that we would have a hard time replacing. It is in our best interests to, in effect, talk them into staying there, because they perform a service to the Academy and to the cadets that would be very difficult to be performed by other personnel.

Chairman RUSSELL. Who is authorized to speak for the Government in promising they would get this rebate of \$60,000, or \$70,000?

Colonel ROCKWELL. Sir, we have not promised them anything.

Senator SYMINGTON. Will the chairman yield?

Chairman RUSSELL. Yes.

Senator SYMINGTON. But you said that you did. In other words, you said when you hired them you promised them something.

Colonel ROCKWELL. They were hired prior to 1963, sir.

Senator SYMINGTON. Whenever they were hired, somebody promised them something that they are not getting; did they not?

Colonel ROCKWELL. That is correct, sir.

Senator SYMINGTON. The Chair's question was, who promised them?

Colonel ROCKWELL. The Department of the Army. When they were hired prior to the Classification Act, and prior to the decision by the Comptroller General, they were hired specifically with the understanding they would receive quarters, light, and heat.

Senator SYMINGTON. Have they been receiving it?

Colonel ROCKWELL. Not since 1963, sir. They have been paying for their quarters, heat, and lights since 1963. Prior to that time they were furnished free. This historically goes back to the 1940's.

Senator SYMINGTON. So what you are saying then is whoever did promise them kept the promise until the General Accounting Office said it was illegal to keep the promise; is that right?

Colonel ROCKWELL. That is correct.

Senator SYMINGTON. Thank you.

Chairman RUSSELL. Senator Saltonstall.

Senator SALTONSTALL. Mr. Chairman, I would like to ask two questions. Why do you draw a distinction between the choirmaster and the civilian instructors in the departments of foreign language? The organist and choirmasters are entitled to quarters without charge when they are available, and yet you don't make that distinction with relation to the civilian instructors. They are entitled to private quarters. If the choirmaster is going to be given public quarters why shouldn't you strike out "when they are available"?

Colonel ROCKWELL. Sir, when the bill was introduced, it was intended to reaffirm that which is presently stated in the law, and the law reads just as you have indicated. There is a distinction at present. The only addition provided by this bill is the inclusion of "without charge." But as far as a distinction between whether he is given quarters when available or entitled to quarters as in the case of the foreign language instructors and —

Senator SALTONSTALL. Mr. Chairman, it simply seems to me that if we are going to change the law because of the necessity, we ought to make it clear that he either is going to get the quarters or he is not. Are there quarters available for the choirmaster up there now?

Colonel ROCKWELL. There are none at this time because the complement of the Military Academy is full.

Senator SALTONSTALL. They are available now?

Colonel ROCKWELL. They would have to be made available by the Superintendent, sir. There are no empty quarters as such there now.

Senator SALTONSTALL. Where is the choirmaster living now?

Colonel ROCKWELL. He, in fact, had quarters on the post, and elected to move off the post when he had to start paying rent, because he could, I believe, find cheaper quarters off the post.

Senator SALTONSTALL. Now this other question. In the committee report, the Bureau of the Budget is opposed to this in its present form. Is that because of what the chairman has brought out?

Colonel ROCKWELL. Sir, I am not sure specifically as to the position of the Bureau of the Budget. However, they indicated in their comments that this would establish, in the future, not in retroactive respect but in the future, a different category of civil service personnel—that is, instructors at the Military Academy, civilian instructors, professors, of which there are some 16 at present.

Senator SALTONSTALL. Do the laws of civil service come into this question then? If we give these quarters, are we going to run into the question of civil service?

Colonel ROCKWELL. These are civil service employees, sir.

Senator SALTONSTALL. And so, if we do this, then we are making a distinction from other civil service employees?

Colonel ROCKWELL. In that sense, yes, sir.

Senator SALTONSTALL. And have you consulted the Civil Service Commission on this?

Colonel ROCKWELL. To my knowledge, no, sir—not the Commission as such.

Senator SALTONSTALL. Now, Mr. Chairman, shouldn't we, in view of what the lieutenant colonel has said, get some statement from the Civil Service Commission? It seems to me we should. If this is going to draw a distinction between the organist and the foreign

language instructors who are civil service employees, if they are going to be in a different group from their colleagues who are under the civil service laws, shouldn't we get some ruling from them?

Colonel ROCKWELL. Sir, I am sure we could. I would like to interject a thought, sir, as to why we consider that they are different. First of all, these individuals wear a uniform at the Academy and perform the duties of an officer. They are civilians only because they have a specific talent that is very difficult, if not impossible, to obtain from the officer corps. In physical education, for example, they are specialists in this field.

Senator SALTONSTALL. I agree with all of that.

Colonel ROCKWELL. Yes, sir; so we feel that in essence they are separated by their duties, by the fact that they are required to work with cadets, not only on the 8-hour day, but as any officer at the Academy works with them.

Senator SALTONSTALL. But they aren't differentiated. Certainly, every member of this committee knows that mighty few people in this country can play the organ and play it well.

Mr. Chairman, I don't know why that is funny. I know it is true.

And I don't believe there are many people around this table who can talk a foreign language, but that doesn't mean that the Civil Service Commission, with whom we have a great deal of trouble all along on changing laws, and so on, would put them in a separate category. That is all I am trying to bring out.

Chairman RUSSELL. To state this in its simplest terms, Colonel, the other instructors there are military personnel.

Colonel ROCKWELL. That is correct, sir.

Chairman RUSSELL. And they are furnished houses.

Colonel ROCKWELL. Yes, sir.

Chairman RUSSELL. And quarters.

Colonel ROCKWELL. Yes, sir.

Chairman RUSSELL. These people who are specialists are not military personnel, though they perform the same services as the military personnel, and the object of this bill is to let them enjoy the same benefits.

Senator SALTONSTALL. That is right.

Chairman RUSSELL. As their fellow faculty members who are military personnel.

Colonel ROCKWELL. That is correct.

Senator SALTONSTALL. Mr. Chairman, may I ask one more question?

Chairman RUSSELL. Yes.

Senator SALTONSTALL. Assuming everything that the Chairman has said is true, and I know it is true, why do you still make a distinction by saying to the organist that he is entitled, when they are available? Shouldn't we, if we are going to change the law, why shouldn't we strike those words out?

Colonel ROCKWELL. Sir, I don't believe there would be any objection to doing so. The only reason I can give you, sir, for it being that way is that the bill attempts to reaffirm the law as it now is stated in title 10.

Senator SALTONSTALL. But that isn't fair to him as compared to the foreign-language instructors.

Colonel ROCKWELL. That is true sir. There is a distinction there.

Senator SALTONSTALL. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Symington.

Senator SYMINGTON. Why do you limit it to civilian instructors of foreign language and civilian instructors in tactics? How about history instructors, English instructors?

Colonel ROCKWELL. Sir, these are in sum total all the civilian instructors at the Military Academy.

Senator SYMINGTON. The rest are officers?

Colonel ROCKWELL. That is right, sir.

Senator SYMINGTON. I see.

Colonel ROCKWELL. In other words, these are specialists in their particular field that we consider over the long haul we cannot provide continuing input from the officer corps for them.

Senator SYMINGTON. You say \$70,000. How much does this amount to per family?

Colonel ROCKWELL. Sir, it is around—it depends on the size of the quarters—around \$1,000 to \$1,500 a year.

Senator SYMINGTON. \$1,000 to \$1,500 per year per family, is that right?

Colonel ROCKWELL. Yes, sir; which they are presently paying back to the Government for their quarters, heat, and light.

Senator SYMINGTON. Then I think the suggestion of taking it up with civil service is a good suggestion. You could solve this problem without legislation if you could get the civil service rating of the people in question increased to take care of the broken promise, couldn't you?

Colonel ROCKWELL. That is correct, sir. However, I feel that the basic reason for not doing this artificially is—

Senator SYMINGTON. That wouldn't be artificial. You would just get their rating increased.

Colonel ROCKWELL. Yes, sir.

Senator SYMINGTON. To take care of what you think is right.

Colonel ROCKWELL. Yes, sir. The problem is, under the Classification Act which establishes specific pay for a specific job, no matter where the job is done, these people are classified in a certain grade. Now, true, we have but one Military Academy and we have but one corps of civilian instructors there. But still the job has been classified across the board.

Senator SYMINGTON. What is the rating of a civil service instructor in a foreign language, and how much salary does he get?

Colonel ROCKWELL. Sir, there is a variance depending on the number of years they have been there. But within the Foreign Language Department we have GS-11's whose annual pay is something around \$10,800.

Senator SYMINGTON. And you could handle this if you could get the civil service to increase that to \$11,800 or \$12,300, is that right?

Colonel ROCKWELL. Yes, sir. However, I am not familiar with the steps through which the civil service would have to go and what grade we would have to give this man to do it.

Senator SYMINGTON. Don't you think it might be a good idea to look into that with the Civil Service Commission instead of coming up with a new law, sort of a restrictive law?

Colonel ROCKWELL. Sir, the reason for not doing so is this. In a sense the law exists. The problem is that the Comptroller General

has ruled that the provisions of title 10 are now outdated, so to speak. We seek to reaffirm those provisions of title 10 rather than provide an artificial grade increase to take care of the loss of pay.

Senator SYMINGTON. In other words, you say that by law you cannot pay more than \$10,800; is that correct?

Colonel ROCKWELL. No, sir. The provisions that I have discussed this morning are in the code right now; the exact wording, with the exception of the two words "without charge."

Senator SYMINGTON. Let me be sure I understand. Could you raise the salaries \$1,000 to handle this problem by executive action at the Military Academy with the approval of the President?

Colonel ROCKWELL. No, sir; not without the concurrence of the Civil Service Commission.

Senator SYMINGTON. If the Civil Service Commission approves, then could you do that?

Colonel ROCKWELL. Yes, sir; I believe we could. I would have to confirm it.

Senator SYMINGTON. Why don't you try it out?

Colonel ROCKWELL. Basically, sir, the very direct answer is we feel that the law is there now to be used in the exact words that we would like it to be used. We have just been told that it is no longer appropriate, by the Comptroller General.

Senator SYMINGTON. I won't pursue it, but if I were you, I would have somebody talk to the head of the Civil Service Commission.

One other point. You say that you can't get anybody but civilians to teach in tactics?

Colonel ROCKWELL. No, sir; this is not tactics, sir, in that sense. This is the overall Office of Physical Education, which is within the Department of Tactics. The Department of Tactics, also has tactical instructors who are military.

Senator SYMINGTON. Yes.

Colonel ROCKWELL. All the people we are talking about here in the Physical Education Office are PE specialists.

Senator CANNON. Coaches?

Colonel ROCKWELL. No, sir; not coaches at all.

Senator SYMINGTON. I have no further questions.

Chairman RUSSELL. Senator Cannon.

Senator CANNON. No questions.

Chairman RUSSELL. Senator Inouye.

Senator INOUYE. Mr. Chairman. What is the situation in the other service academies? What is the situation there? Are they civilians?

Colonel ROCKWELL. There are some; yes, sir. However, at the Air Force Academy there is no provision in the law for an organist or civilian professors. The Naval Academy is specifically excluded from the Classification Act, so that the personnel there are not under civil service in the sense that our people are. They were excluded by the Classification Act, and our view was that we were already protected by the law. Now the Comptroller General has said the law is no longer appropriate, so maybe at the time in 1949 when the Classification Act was passed, we should have asked to be excluded also.

Senator INOUYE. What you are trying to tell me is that the organist, the choirmaster, and physical education directors at the Naval and Air Force Academies are civilians?

Colonel ROCKWELL. That is correct for the Naval Academy.

Senator INOUYE. And they receive quarters?

Colonel ROCKWELL. No, sir. We have two separate situations. The Naval Academy is entirely separate from the other two academies, because they were specifically excluded in the Classification Act, which gave rise to this question—they were specifically excluded from that act. The Air Force and military academies have no similar laws in the Code, with respect to the organist and civilian professors. They have no civilian instructors at the Air Force Academy in the sense that we do. The Naval Academy has them, but they are under an entirely different set of excluded employments.

Senator INOUYE. The Air Force Academy has military officers—throughout.

Colonel ROCKWELL. Instructors, not the organist. The organist is a civilian.

Senator INOUYE. Thank you very much.

Senator SALTONSTALL. Mr. Chairman, may I ask one more question?

Chairman RUSSELL. Yes, indeed.

Senator SALTONSTALL. (Off the record.)

Chairman RUSSELL. I don't know that there is anything here to be highly classified, Senator.

(Off the record.)

Chairman RUSSELL. Colonel, you state that at the Air Force Academy it is entirely military personnel.

Colonel ROCKWELL. To the best of my knowledge the Air Force Academy has no civilian personnel as we have at the Military Academy.

Chairman RUSSELL. But the Navy does, doesn't it.

Colonel ROCKWELL. Yes, sir.

Chairman RUSSELL. Why aren't they affected by this?

Colonel ROCKWELL. Because they were excluded. When the Classification Act was passed in 1949, they were excluded from that Act. The Secretary of the Navy has the authority to set the wages of those civilian personnel who are part of the Naval Academy faculty.

Chairman RUSSELL. The Navy was a little more on the ball when the bill went by than the Army, wasn't it?

Colonel ROCKWELL. No, sir, because we had the law already there. We thought we were in business. Now, subsequent to that time, the Comptroller General says we are outdated, so in retrospect we should have gotten on the bandwagon.

Chairman RUSSELL. There being no more questions, Colonel, we thank you, sir.

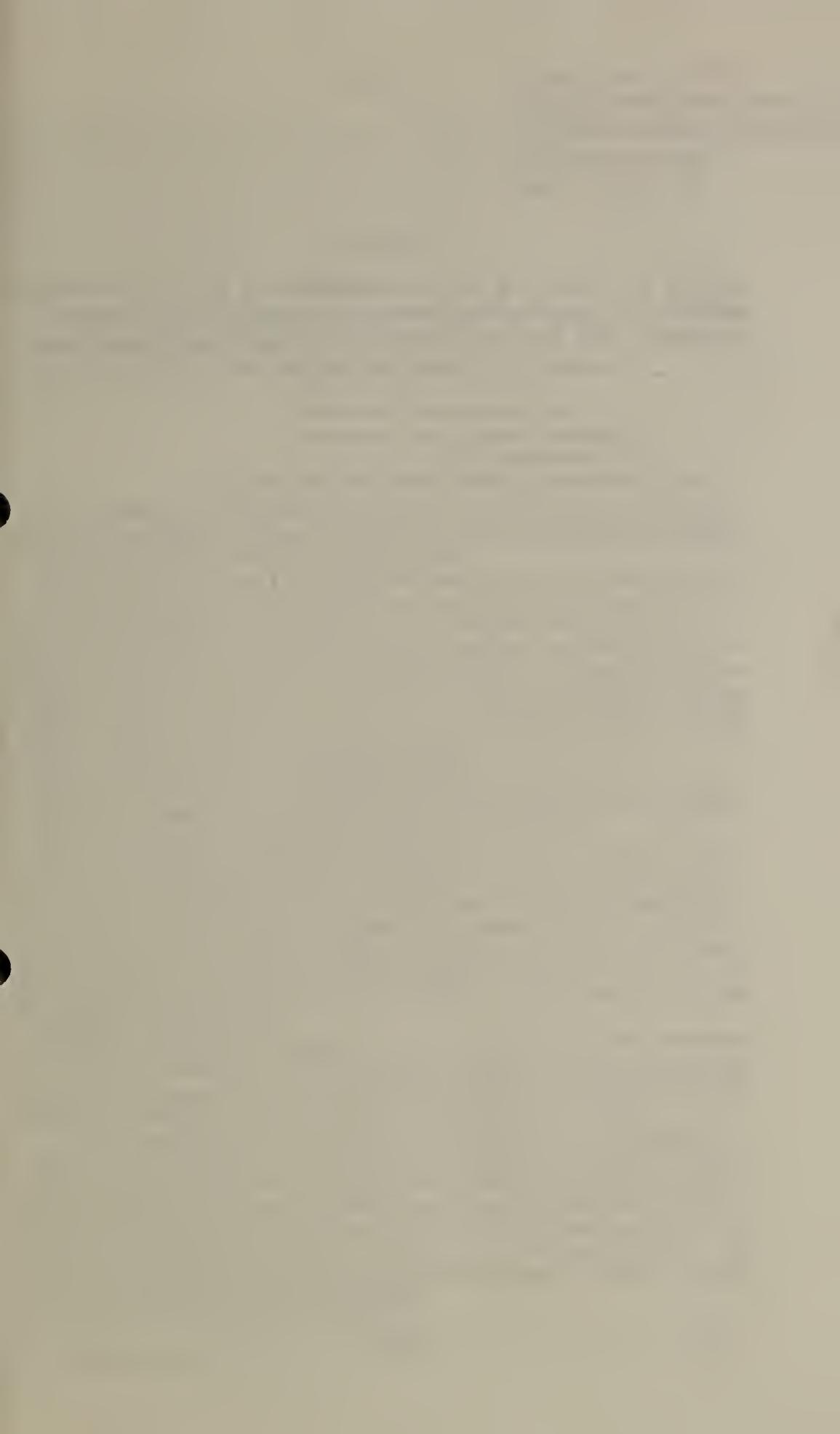
Colonel ROCKWELL. Yes, sir.

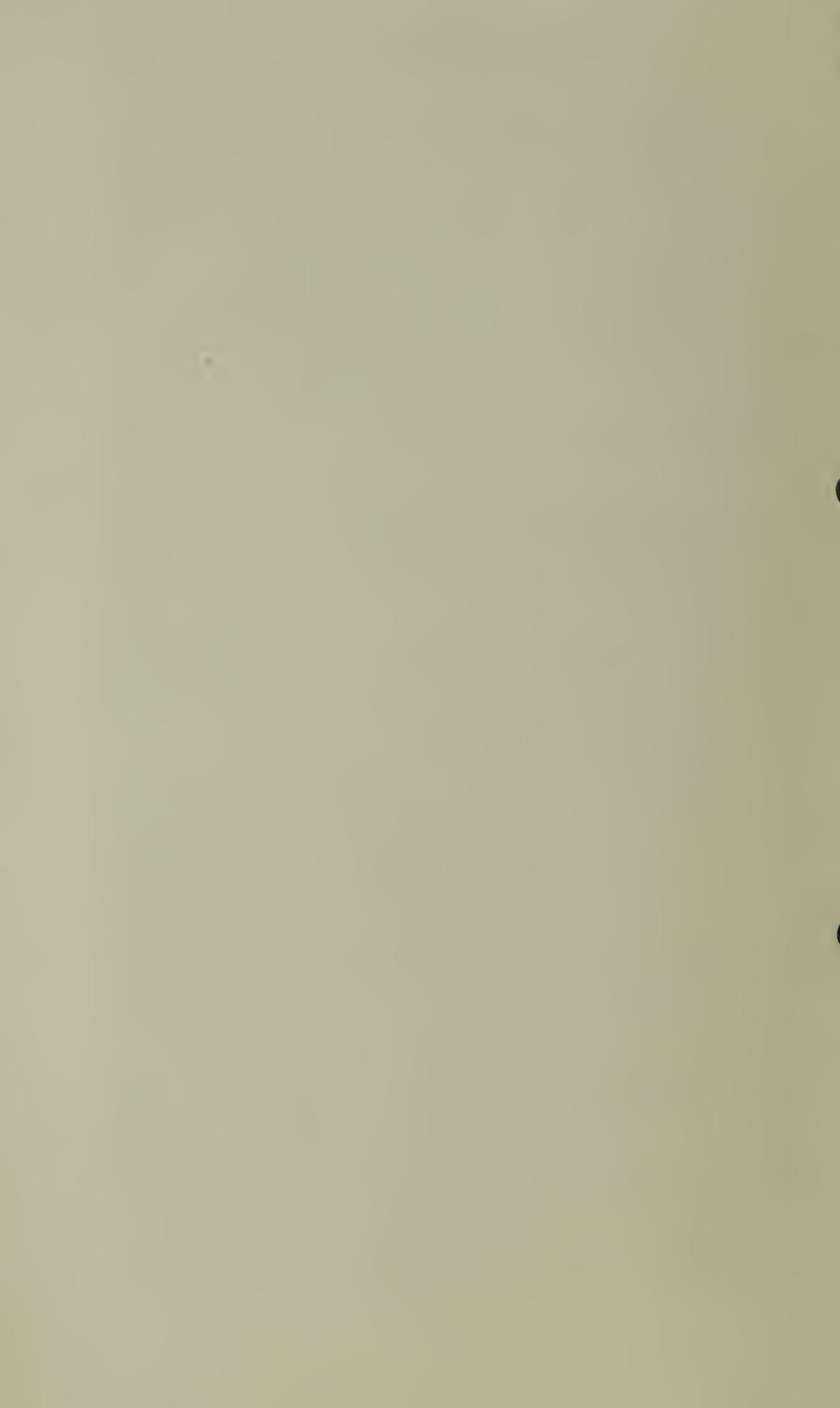
Chairman RUSSELL. The committee will now go into executive session.

(Whereupon, at 12:03 p.m., the committee went into executive session.)

(In executive session on October 18, 1966, the committee voted to report H.R. 7973, with an amendment, as covered by S. Rept. 1878.)







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[No. 93]

SUBCOMMITTEE NO. 3 CONSIDERATION OF H.R. 17500, TO AMEND CHAPTER 141 OF TITLE 10, UNITED STATES CODE, TO PROVIDE FOR PRICE ADJUSTMENTS IN CONTRACTS FOR THE PROCUREMENT OF MILK BY THE DEPARTMENT OF DEFENSE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 3,

Washington, D.C., Wednesday, September 21, 1966.

The committee met, pursuant to notice, at 10 a.m., room 2216 Rayburn House Office Building, Hon. Melvin Price, chairman, presiding.

Mr. PRICE. The committee will be in order.

On September 2, the bill H.R. 17500 was referred to this subcommittee for consideration, with the request from Chairman Rivers of the Armed Services Committee that we schedule hearings as soon as possible. On that same date, the bill was referred to the Department of Defense for their comments, which is a normal procedure followed by the committee. In view of the short time given the Department to respond in writing, we have not received a formal written report on the Department's position. However, this will be obtained during the course of these hearings.

The bill H.R. 17500 amends chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

The bill, introduced by Mr. Evans, is identical to bills also introduced by Mr. Rivers of South Carolina, H.R. 17483, and H.R. 17503 by Mr. Love, of Ohio, one of our colleagues on this subcommittee.

The bill would authorize contracts in existence on or after March 1 of this year to be amended to provide an equitable price adjustment for increased prices paid by a contractor for raw milk as a result of increases in the producer price of such milk as ordered by the Secretary of Agriculture.

The bill also would authorize the inclusion in future contracts for the procurement of milk a provision for equitable price adjustments for increased or decreased prices paid by a contractor for raw milk as a result of action by the Secretary of Agriculture.

It is my understanding that certain dairies holding milk contracts with the Department of Defense are experiencing losses on their firm-fixed-price contracts as the result of increased prices for raw milk ordered by the Secretary of Agriculture through Federal milk marketing orders since March 1 of this year. The result of these milk marketing orders reportedly has been to increase the average price of raw milk approximately 90 cents per hundredweight, which I am told is equivalent to about 8 cents per gallon.

(10941)

Dairies contracting to supply the military departments with milk for use in messhalls and for resale in military commissaries are performing under fixed-price contracts which do not include a clause authorizing an amendment to the contract, in the event of unforeseen increases in the price of raw milk ordered by the Department of Agriculture. Because of this lack of authority of the Department of Defense to amend procurement contracts of this type, many of the dairies reportedly are faced with tremendous losses, and even bankruptcy in certain cases, if they attempt to fulfill their contracts.

This morning, we will receive testimony from Members of Congress and industry representatives, followed by the Department of Agriculture, the General Accounting Office, and the Department of Defense. I am sure we cannot finish the hearings on this important legislation this morning; therefore, those who do not get an opportunity to testify today will be heard tomorrow morning.

Our first witness will be Congressman Rodney M. Love, who will be accompanied by Mr. Robert Bennett, vice president and general manager of the Molers Belmont Dairy Co., of Dayton, Ohio.

(The bill is as follows:)

[H.R. 17500, 89th Cong., 2d sess.]

A BILL To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 141 of title 10, United States Code, is amended—

(1) by inserting at the end thereof the following new section:

“§ 2390. Contracts for the procurement of milk; price adjustment

“(a) Under regulations prescribed by the Secretary of Defense a contract of the Department of Defense for the procurement of milk where the period of performance exceeds ninety days shall include a provision for an equitable price adjustment for increased or decreased prices paid by a contractor for such milk as a result of increases or decreases in the producer price of fluid milk for beverage purposes ordered by the Secretary of Agriculture after the date of bid opening in a formally advertised procurement or the date of the contract in a negotiated procurement.

“(b) Under regulations prescribed by the Secretary of Defense, any contract for the procurement of milk which was being performed on or after March 1, 1966, may be amended to provide an equitable price adjustment for increased prices paid by a contractor for such milk as a result of increases in the producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture on or after March 1, 1966. A price adjustment shall not be made unless it has been determined by the Department that—

“(1) such amount was not included in the contract price;

“(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

“(3) the contractor will suffer a loss under the contract because of such increases in producer prices.”

(2) by inserting the following new item in the analysis thereof:

“2390. Contracts for the procurement of milk; price adjustment.”

Mr. PRICE. Mr. Love is a member of the Armed Services Committee, and also a member of this subcommittee.

STATEMENT OF HON. RODNEY M. LOVE, REPRESENTATIVE FROM OHIO

Mr. Love. Thank you very much, Mr. Chairman. My statement, Mr. Chairman, will be in reference to the bill I introduced which you

mentioned in your statement, H.R. 17503. Although I understand it is identical with the other two which you mentioned, I am presenting it here.

I introduced this bill, Mr. Chairman, to right a wrong which occurred as a result of an order issued by the Department of Agriculture that raised the price of raw milk.

As a direct result of such unforeseen price increases, those dairies that entered into fixed price milk contracts with the Department of Defense have suffered substantial losses and will suffer greater losses if corrective legislation is not enacted.

The Department of Defense lacks authority to amend procurement contracts of this type and, unless we act now during this session of Congress, suppliers across the Nation will not only suffer losses but small business may find that bankruptcy will be the only way out of their dilemma. To my way of thinking, this is an unreasonable burden.

My bill, Mr. Chairman, would authorize contracts in existence on or after March 1 of this year to be amended to provide an equitable price adjustment for increased prices paid by contractor for raw milk as the result of increases in the producer price of such milk, as ordered by the Secretary of Agriculture.

The measure would also authorize the inclusion for equitable price adjustments for increased or decreased prices paid by a contractor for raw milk as a result of action by the Secretary of Agriculture.

Mr. Chairman, this inequity was called to my attention by a constituent, Mr. Robert R. Bennett, vice president and general manager of Molers Belmont Dairy Co., a company which has supplied milk and other dairy products to the Dayton area since 1900. They can ill afford the loss. Mr. Bennett is here to testify in behalf of the company and I introduce him to this subcommittee.

Mr. PRICE. Proceed, Mr. Bennett.

STATEMENT OF ROBERT R. BENNETT, VICE PRESIDENT AND GENERAL MANAGER OF MOLERS BELMONT DAIRY CO.

Mr. BENNETT. Thank you, Mr. Chairman. I appreciate the opportunity to present our case here this morning.

On May 5, 1966, we were invited to bid on a milk and dairy products contract at Wright-Patterson Air Force Base located near Dayton, Ohio. The estimated value of this contract was \$56,087.46 for troop issue at Wright-Patterson Air Force Base and \$581,995.20 for resale through the commissary at Wright-Patterson Air Force Base, making a total of \$638,082.66.

We were successful in being awarded this contract, with the next lowest bid being \$198.94 difference on troop issue and \$2,797.74 difference on resale items. This is a 0.0047 percent difference. This is less than one-half of 1 percent. We accepted the contract in good faith with milk costing \$5.04 per hundredweight for the month of May 1966 under U.S. Department of Agriculture's Federal Order No. 34.

September prices have risen to \$5.71 per hundredweight and from all indications this price will further increase over the year. In the meantime we have negotiated with our producers to guarantee them a minimum of \$5.80 per hundredweight through March of 1967. The difference between \$5.04 per hundredweight milk and \$5.71 per hun-

dredweight milk is 67 cents per hundredweight, and in terms of gallons this is almost 6 cents per gallon.

On the contract this amounts to a loss of \$50,000 per year to our company.

We have contacted the people at Wright-Patterson Air Force Base and they have been very cooperative, but said there was nothing they could do unless there was an act of Congress to change this contract. Our attorneys have read the contract and legally we are bound by the contract, but it is horribly unfair to make our company sell milk and dairy products to the Government at a loss because of an act created by the Government.

This contract is a set-aside contract for small business and is to help small business. We appreciate this, and over the years it has been very helpful. It has helped us put more volume through our plant and keep our machinery and people more productive, but this contract is a terrific burden on our company. A provision is needed for us to either increase or decrease our prices as a result of the Department of Agriculture's order to increase or decrease our producers price.

Thank you very much.

Mr. LOVE. Are there questions, Mr. Chairman?

Mr. PRICE. Have you anything further, Mr. Love?

Mr. LOVE. I have nothing further except Mr. Bennett would be glad to answer any questions, any specific questions.

I might say we have a copy of the contract here. As usual, it is a very voluminous document. If the committee decides they would like to have a copy of it, Mr. Bennett has agreed to supply it.

Mr. PRICE. When did these losses start to occur? Are they occurring now or is this something you foresee as a result of the order?

Mr. BENNETT. They have already started. Our contract started on June 25 of this year. Support prices went up on July 1, so starting July 1 we have had losses and are incurring losses right now.

Mr. PRICE. About 8 cents a gallon?

Mr. BENNETT. About 6 cents at the present time. This possibly could go higher. Our predictions are that the milk costs will go up in October, November, and December.

Mr. PRICE. The 6 cents per gallon is not an increased cost to you alone, but an actual loss to you per gallon?

Mr. BENNETT. That is right.

Mr. PRICE. On each gallon that you sell to the Department you are losing 6 cents per gallon?

Mr. BENNETT. That is correct.

Mr. HALL. You are actually not losing it. You are losing truly what the increase you might expect if it had not been for the increased milk marketing order and your contract.

Mr. BENNETT. That is correct.

Mr. HALL. Assuming the cost of production of milk is the same, it is not a loss. Perhaps that is a faulty assumption, I well realize, but we are not talking about general inflation here but one milk marketing order and action of the Secretary of Agriculture and your having what you and even your counsel says is a perfectly valid contract to supply this milk. Therefore, what you are losing is what you might have made had you been free to escalate along with the milk marketing order and along with the general spiral of inflation.

Oftentimes this has been aided and abetted by the Secretary of Agriculture.

Mr. BENNETT. I am losing what I might have made plus actually losing out of pocket money.

Mr. PRICE. That is what I am bringing out. Are you actually losing 6 cents a gallon?

Mr. BENNETT. We figure about 2 cents' profit, so I am losing my profit of 2 cents plus an actual loss of 4 cents.

Mr. PRICE. You are actually losing 4 cents a gallon.

Mr. BENNETT. That is right.

Mr. PRICE. You estimated that if you would continue this contract for 1 year without any relief you would lose \$50,000 in that year?

Mr. BENNETT. We are projecting it on the volume we bid on the contract.

Mr. PRICE. Then is this \$50,000 you estimate an actual loss or is it failure to profit to the extent that you anticipated on the contract?

Mr. BENNETT. An actual loss inasmuch as I lost my profit, plus I will lose the—

Mr. PRICE. The \$50,000 is a plus, is it, or is it an actual loss?

Mr. BENNETT. This would include my profit. In other words, I figure we should make around a \$20,000 profit, \$30,000 would be actual dollars-and-cents loss to our company.

Mr. PRICE. Actually you would lose, if you continue this contract on the present basis for a year, \$30,000 on this contract.

Mr. BENNETT. Plus any profit I might make.

Mr. PRICE. Yes. I am trying to get at the actual loss.

Sometimes you make contracts and you do not make a profit because you bid too low, but this is directly attributable to something beyond your control, a marketing order. You were not aware of this order, and if so, you were not aware of what the figure would be at the time you submitted the bid.

Mr. BENNETT. We always try to protect our milk costs for a year. As you know, milk costs have gone up and down throughout the year. We try to strike a mean average.

Mr. PRICE. Justification for relief would be if you actually were suffering a loss, due to the marketing order and your inability to make adjustments in the contract.

Any further questions?

Mr. HALL. Mr. Chairman, to continue that line of thought further. I want you to make a fair profit, also.

Mr. PRICE. That is correct.

Mr. LOVE. We have a slogan in Ohio, Mr. Chairman—"Profit is not a dirty word."

Mr. HALL. That is right.

Mr. PRICE. I think we all agree on that. I know everybody here would advocate any program to help small business. It is necessary to tie down what the actual loss is for the record, however.

Mr. HALL. You do have a fixed fee in this contract for 1 year; is that correct?

Mr. BENNETT. Yes.

Mr. HALL. Secondly, is this the sole function of your dairy company, to supply milk to the armed services, or do you have other markets?

Mr. BENNETT. We have other markets; yes, sir.

Mr. HALL. That is all I have.

Mr. PRICE. Mr. Morgan?

Mr. MORGAN. I do not recall from your statement, but did you indicate you are also supplying a commissary?

Mr. BENNETT. Yes.

Mr. MORGAN. Has your delivery increased at the commissary during this period of rising prices?

Mr. BENNETT. It is very hard to say right at the moment because sales to commissaries are very unpredictable because of different times of the year and people being on vacations and things of this nature. I really can't say about that.

Mr. MORGAN. Mr. Chairman, at at least one Air Force base deliveries have increased to the commissary by as much as 20,000 gallons a month above the estimated requirements provided suppliers for the purpose of bidding on the contract.

Mr. PRICE. Mr. Love?

Mr. LOVE. Mr. Chairman, might I make one comment which might come out during the hearing later. I want only to say that I notice all the bills, including mine, are somewhat limited. We refer only to milk.

I was looking over Mr. Bennett's contract and I see that he is furnishing whipping cream, half-and-half, cottage cheese, sour cream, yogurt, orange juice, but we will skip that, egg nog, and some other products.

I wonder whether in this hearing we might consider, particularly when the Department of Defense witnesses come, what their opinion is with regard to other dairy products not covered in the bills.

While whole milk is the biggest item, nevertheless the prices being paid here affect these other products which are being sold under these contracts.

Mr. HALL. Did I understand this is all manufacturers milk?

Mr. BENNETT. All class 1 fluid milk.

Mr. HALL. Class 1?

Mr. BENNETT. I take it back—most of it is class 1 except with regard to cottage cheese and sour milk.

Mr. HALL. I am not sure your State law is the same. Let's be sure we understand.

I thought in one of the statements that either you or Congressman Love read, we said your contract was for manufacturers milk, and that is class-3 milk in my State, and in my marketing area.

Mr. BENNETT. This is all class 1 milk with the exception of cottage cheese and sour cream in our particular marketing area.

Mr. HALL. What about ice cream?

Mr. BENNETT. Ice cream is class 2.

Mr. HALL. Is that included in your contract?

Mr. BENNETT. I haven't a contract on it, but it is in the contract. I haven't this particular item.

Mr. HALL. This is standardized, homogenized, pasteurized, and all those other things. There is no question in the contract about protection of the troops.

Mr. BENNETT. That is right.

Mr. HALL. The State law and your contract and the sanitary inspectors of the Air Force take care of all of that.

Mr. BENNETT. Yes.

Mr. HALL. And, this committee can be advised that you are thoroughly happy about that part of the situation.

Mr. BENNETT. Oh, yes; no problems at all.

Mr. MORGAN. What percentage of your contract, dollarwise, consists of fluid milk versus these other milk products?

Mr. BENNETT. I would have to guess at it because I don't know specifically.

Mr. LOVE. Is this not the figure, Mr. Bennett?

State it another way, or tell him you will supply it for the record.

Mr. BENNETT. Yes, I can supply the correct figure for the record, Mr. Morgan.

Mr. MORGAN. Mr. Chairman, I have been led to believe that in most of these contracts fluid milk comprises 90 percent of the total value, dollarwise.

Do you think that is a fair percentage, Mr. Bennett?

Mr. BENNETT. Ninety percent fluid milk?

Mr. MORGAN. Yes.

Mr. BENNETT. Including skim milk and whole milk products?

Mr. MORGAN. Fluid milk which would be covered under this legislation.

Mr. BENNETT. Between 85 and 90 percent would be about correct; yes.

Mr. PRICE. Thank you very much, Mr. Love and Mr. Bennett.

The next witness will be our colleague from Texas, the Honorable Earle Cabell.

STATEMENT OF HON. EARLE CABELL, REPRESENTATIVE FROM TEXAS

Mr. CABELL. Thank you, Mr. Chairman and members of the committee. I am Representative Cabell, Fifth District of Texas, which is Dallas County.

While I am no longer actively associated nor do I have an active personal interest in the dairy business, I have spent some 35 years in that business, and therefore I feel that I can speak with some degree of experience, if not authority, on this.

One experience was the out-of-pocket loss of \$100,000 back in 1953 when we had a serious drought in the Nation and in our market and I was stuck with a 1-year contract with Sheppard Air Force Base.

I would like to commend the committee for holding hearings on this subject, and I would like to say that this is not a matter of bailing someone out of a mistake that they might have made in their effort to secure business.

This is remedying an inequity of long standing, and frankly in my sincere opinion it will redound to the benefit of the Government in its procurement policy.

In support of that statement I would like to call your attention to the fact that the milk industry does not have a fixed cost of raw materials when they enter a bid as so many other suppliers or con-

tractors do. To the contrary, their cost of raw materials is determined through the Department of Agriculture in almost all cases.

In support of my statement that this will redound to the benefit of the Government, in preparing a contract, particularly for 6, 9, or 12 months, naturally a hedge or a cushion has to be provided in bidding for a slight fluctuation that cannot be forecast under normal market conditions, and, therefore, the bidder must protect himself to some degree; whereas, under a contract of this type, which escalates both up and down, the contractor or the bidder is bidding on his service without having to take into consideration fluctuating markets.

Therefore, it becomes a fixed cost of raw materials plus the added amount for the processing and delivery of those commodities, and therefore it will be cut much thinner and it will open the way to more small bidders because the small bidder cannot afford the exposure of a large contract if he does not have some assurance as to what his major raw material costs will be.

In further support of that contention I cite to you the procedure adopted by the State Board of Control of the State of Texas some several years ago, which in their purchases and contracts for their various institutions and agencies do provide for this escalation. As a result, the general level of their procurement has been less, and there has been considerably more competition in that bidding because it made it possible, I believe, for more small business to enter that market.

I call your attention, also, in line with Congressman Hall's questioning, which certainly is very appropriate, that whenever a plant, and particularly a small plant, bids on a Government contract, there is actually very little net profit involved because this is a sustaining volume which helps him to keep his plant running at as near efficient capacity as possible, and there is generally very little net profit involved; whereas, if he is hit with one of these sudden shocks then that can go very easily, and it quite often does, into an out-of-pocket loss.

Consequently, as I mentioned a while ago, that is a deterrent to a small plant from entering into these rather large volume bids.

In closing, gentlemen, I would like to thank the members of the committee for introducing this very fine piece of legislation, I want to thank your chairman for granting this early hearing, and I urge my colleagues to support what I think is a very fine piece of legislation.

I would be happy to submit to any questions.

Mr. PRICE. Thank you. I suppose you have in your own areas relatively small operators who have contracts where they are presently losing?

Mr. CABELL. We do have. As a matter of fact, that was another situation of another small business set-aside. Now, they are really up against it.

I do not have their actual figures but I can certainly attest to the fact that they are caught in this trap.

Mr. PRICE. Dr. Hall?

Mr. HALL. Let me first of all compliment Congressman Cabell for bringing us the benefit of his experience. Certainly it confirms what Congressman Love and Mr. Bennett have said.

Mr. Chairman, let me say that I have had innumerable letters from small dairy products producers as well as larger ones, including such

as Foremost in the Kansas City office. This evidently is a very real problem and something needs to be done about it.

I have only one question outside of thanks and commendation. Let us get back away from Federal Order No. 34 for just a moment, and suppose that with or without set-asides we have a given contract and are in a general situation such as the experience you related to us, Congressman Cabell. Under such circumstances, if there were a general act of God, a drought, or something which destroyed the milk products, under this contract would you be required to go outside of your area and procure milk in order to fulfill the contract?

Mr. CABELL. Very definitely, sir, when you are bound by a contract and you have not only a legal but also a moral obligation to fulfill the terms of that contract, and then your local supply is insufficient. You then have to bring milk in from other markets at an extremely high cost of transportation. You then can very readily sustain a very, very severe loss.

Mr. HALL. This is why sometimes we ship milk from the Ozark marketing area, the St. Louis marketing area into Texas and vice versa.

Mr. CABELL. That is correct.

If I may, I would like to speak to a question raised by Mr. Morgan which I think is quite pertinent to this entire question. That had to do with the effect on the commissary sales in such a situation. A very untenable situation is created in a man's own competitive market where under circumstances such as this a commissary which sells to the personnel on a military base on a cost-plus basis, and then is so far under the civilian market that it gives the vendor, the retailer, and the dairy-men within that area an extremely rough time in trying to explain to his customers, his regular civilian customers, why he is charging them 4 to 6 cents a quart more for milk than they are selling his own milk on that military post.

I think if you would check that you will find that the commissary sales do increase materially when a situation such as this occurs, and it is not even out of the question to think that many of the military personnel are buying milk for their neighbors from the commissary in order to save them that 2, 4, 6 cents a quart. It is a big factor.

Mr. STAFFORD. Congressman Cabell, could you comment on the proposition of whether or not the contracts to supply milk to military installations are usually unattractive enough so that major handlers more or less rotate the dubious honor of bidding on and supplying milk?

Mr. CABELL. I know of no such case where that happens. The military contracts are desirable from the view point of maintaining a good volume through your plant. The whole industry has gotten on such a low margin over a period of years, like most other facets of the food industry, that the only way you can sustain your operation is to put an efficient volume through that plant, and your military contracts help to provide the difference there between an efficient operation and an inefficient one.

Therefore, they are generally to be desired.

Again, though, I call your attention to the fact that under the present situation there is a definite hazard involved for the small operator because he just cannot take a loss such as is being incurred at this time.

Mr. STAFFORD. I think, Mr. Chairman, that our colleague's testimony has been very helpful. I want to express my appreciation for it.

Mr. CABELL. Thank you, sir.

Thank you, Mr. Chairman.

Mr. PRICE. Thank you, Mr. Cabell.

The next witness will be the Honorable George W. Grider, a Member of Congress from Tennessee.

We are glad to have you with us, Congressman.

Mr. GRIDER. Thank you, Mr. Chairman. It is an honor for me to appear before this distinguished subcommittee, and I am very grateful for the opportunity.

I have a prepared statement which I would like to submit, and in the interest of saving this committee's time, I think I can make a few comments on it.

Mr. PRICE. Without objection the full statement will be included in the record.

(The full statement is as follows:)

REMARKS BY REPRESENTATIVE GEORGE W. GRIDER

Mr. Chairman, distinguished members of the Subcommittee, I have come before your subcommittee today to testify on behalf of H.R. 17500. I support this bill because I feel that an inadvertant injustice on the part of the Department of Agriculture has been committed which has placed three small independent milk plants in Memphis, Tennessee in a tremendous financial squeeze. Allow me to review, briefly, the plight of one of these dairies.

On December 14, 1965, Klinke-Reed Dairies was awarded a contract by the U.S. Naval installation at Millington, Tenn., to supply milk for the period of January 1 thru June 30, 1966. In calculating the bid in this sensitive and competitive market, Kinke-Reed Dairies used all available information and estimations on producer milk prices for the period involved. Projections from the milk producer's cooperative were used. The formula established by the Federal Market Administration was used. And, since there has been a seasonal drop in milk prices historically every March 1, since 1950 when the Memphis Order originated, the Dairy was able to make a good bid which would allow them a fair profit.

The business risk that the Klinke-Reed Dairies was taking involved the fluctuation in the basic price of milk. Fluctuation, we all must agree, is a normal business risk to be assumed by the bidder. The basic formula price in the Memphis market fluctuated upward during the first four months of 1966.

The following is as contrasted with the first four months of 1965:

	1966	1965
January.....	\$3.47	\$3.29
February.....	3.47	3.25
March.....	3.58	3.22
April.....	3.68	3.22

NOTE.—This represents the basic formula price of class I milk based on the average price paid for milk in Minnesota and Wisconsin. This is termed the Minnesota-Wisconsin series by the Department of Agriculture.

These fluctuations, as inordinately high as they were (a \$.44 disparity in the month of April), must still be considered a normal business risk.

This basic formula price is only 1 of 3 factors determining the price of milk. A second is the supply-demand adjuster which is calculated monthly on the basis of supply and demand. The third factor is the seasonal buying factor. This figure is high when the Agriculture Department wishes to stimulate milk production—September through February in Memphis—and low when the USDA wishes

to curtail production. Hence, in Memphis from March through July the seasonal buying factor has always been reduced, thereby discouraging milk production. An unexpected demand arose in March. For the first time since the program began in 1950, the Secretary kept the March seasonal buying factor high to act as a production stimulant. The Secretary's decision was in the best interest of the dairy farmer as well as the average consumer.

By way of a graphic explanation, let me take the month of January, 1966 (see below). As I stated previously, the basic formula price for Class I milk—milk for fluid consumption—was \$3.47. The supply-demand adjuster was \$.25. The seasonal buying factor in January, 1966 was \$1.91. This adds up to \$5.63 per hundred weight—the minimum price paid by milk dealers for Class I milk as set by the USDA. In January, 1965, this figure, as was usual because of the customary seasonal price decline, dipped to \$5.11 per hundred weight. But on March 1, 1966, after the Secretary had suspended the reduction of seasonal price factor (which historically has been in effect more than 15 years), the minimum price was \$5.73 per hundred weight. The small, independent dairies had expected, and had every right to expect, the \$.41 decrease.

The effect of this action, then, was to increase the Klinke-Reed Dairies' milk buying price by \$.41 per hundred weight from March 2 through April 10, at which time the Secretary restored the seasonal factor. But at the same time, he increased the base price \$.22 per hundred weight which held through July. Hence, in March, April, May and June, Klinke-Reed Dairies had to pay an average of \$.65 per hundred weight more than they had paid the previous years and \$.41 per hundred weight more than they had reasonably estimated.

What do all of these statistics mean? It simply means that on a contract totaling \$173,087.18 for a six-month period, the Klinke-Reed Dairies, who were hoping to realize a painstakingly-calculated profit of between five and six thousand dollars suffered instead a loss of \$5,000. This was also the case with Turner's Dairy and Cedar Grove Dairy in Memphis.

This loss, due to the USDA action, was not just in expected profit. These three Memphis dairies are actually hundreds of dollars short of receiving from the Navy the actual cost of the milk.

The Secretary's decision on March 1 was a good one for the dairy farmer. It has been beneficial to the consumer. However three businesses in Memphis, as well as innumerable others across the country with similar government contracts, are suffering a financial loss. These businesses, on the basis of over 15 years of experience were expecting a \$.41 per hundred weight decline in March. The sudden and unprecedent—although necessary—action taken by the Secretary could in no way be foreseen. Since these dairies have a contract with a government installation and since the government is responsible for the price increase, it seems to me that these independent milk producers are entitled to collect the increase in raw milk price from the Navy.

Mr. Chairman, I sincerely hope that your committee will take action to provide remuneration to these small dairy operators who have been damaged by an otherwise, prudent decision on the part of the Secretary.

MINIMUM PRICES PAID BY MILK DEALERS FOR CLASS I MILK—SET BY U.S.D.A.

Base formula price

	1966	1965
January.....	\$3.47	\$3.29
February.....	3.47	3.25
March.....	3.58	3.22

Example, January 1966

*Per
hundred
weight*

Basic formula price for class I milk (derived from Government's average of competitive buying prices of 900 dairy manufacturing plants in Minnesota and Wisconsin).....	\$3.47
Supply-demand adjuster (calculated monthly).....	.25
Differential over basic formula (transportation allowance from Minnesota-Wisconsin plus incentive).....	1.91

Minimum price in January 1966..... 5.6

Minimum prices over 6-month span

	1966	1965
January	\$5.63	\$5.67
February	5.63	5.55
March	5.726774	5.11
April	5.707	4.96
May	5.61	4.99
June	5.62	5.01

**STATEMENT OF HON. GEORGE W. GRIDER, REPRESENTATIVE
FROM TENNESSEE**

Mr. GRIDER. Thank you.

Mr. Chairman, basically it seems to me that the problem is this: The small milk producer is operating in an artificial market where prices are set by the U.S. Government. He is dealing with another branch of the Government in the case of my constituents, that is, the U.S. Navy, under a contract which does not take into account the possibility that the Department of Agriculture will change its policies.

In the case of my three dairies, ever since the marketing order went into effect in about 1950, there had always been a downward price adjustment called a seasonal buying factor in March of every year.

It is to the benefit of the Navy, and to the Government generally, that these contractors take into account whether the price will go down in March.

In my case, my dairymen took that into account, and as a result the Navy got a much better contract in a very sensitive and competitive market than if this had not been done.

Then, through no fault of its own and in the face of a history of 15 years, the Department of Agriculture did not reduce the seasonal buying factor in March, which changed the price by 41 cents per hundredweight.

My client has not only failed to realize a profit, but I might point out that the contract totaled in the case of the specific dairy I mentioned in my testimony, \$173,000, and he was hoping for a profit of between \$5,000 and \$6,000, which is a little over 3-percent profit.

Instead of that, because of this unprecedented change, he has suffered a loss of about the same amount.

He has actually on some occasions been forced to sell the milk below the cost to him, taking into account the cost of transportation. This seems to me totally unfair, Mr. Chairman, to make a contract with an entity of the U.S. Government which controls the price of the product, and then have that entity change the price in an unprecedeted manner when the contract is in midperformance, and then not make any provisions and not even permit provisions to be in the contract which would provide for an equitable settlement.

That is the case, and that is the reason that this bill has been introduced and I believe the reason the committee is holding hearings.

I most earnestly and respectfully urge the passage of the Evans bill.

Mr. PRICE. Thank you very much. I have had an opportunity to read over your full statement, and I think it is a fine statement as you found it in your own area.

Are there any questions of Congressman Grider?

Mr. HALL. Mr. Chairman, I want to extend the same thanks and compliments to Congressman Grider that you have. This is an excellent statement. It is clear, analytical, succinct, and it presents the problem certainly from the point of view of the Klinke-Reed, Cedars, and the people in and around Memphis.

This is the kind of information we need. In addition to that, Congressman Grider has gone right to the meat of the coconut, so to speak. At the top of page 3 of his statement he speaks of suspending the 15-year seasonal price factor. This has been a suspension of the reduction of the seasonal price factor.

Perhaps we are nibbling at a temporary solution for a very basic problem, and all of us are in agriculture and milk marketing order areas. Extensive hearings have been held, I will say for the members who do not represent particular milk marketing areas, on this very problem.

Perhaps we should get at the basic common denominator and the underlying cause of this business and not have artificial shoring up and differential Federal control of marketing orders in different areas, whereas in the Southeast United States parity support and marketing orders are one rather sizable factor, albeit milk supply is just about as good as it is in the real milk-producing areas, the famous ones such as all of our colleagues here represent.

However, it still causes a differential and differences in the support of parity for milk and its products.

I am not sure but what we should be addressing ourselves to repealing Mr. Freeman's order No. 34 in the Federal Register rather than amending the contract. Perhaps we should be doing both, but let us not be unaware that this is the more basic of the two problems.

Then, of course, there is a third even more basic problem than that. I believe, if I may have just another minute, Mr. Chairman, it is as good a time as any to state that. There will be a progressive shortage of milk and dairy products in the United States of America based on such simple equations as the population explosion and the decrease in census of dairy cattle. You do not have to be much of a modern-day, new-math-type of figure, as we say down in the Ozarks dairyshed, to realize that if you are dropping off 100,000 cattle a year, which produce 1,000 pounds of milk a year at \$4 a hundredweight, that you are losing one of the greatest industries that we have had. But, even more important than that the consumer will be bidding for a short product.

I do not think any amendment or any laws we make will have much effect on this unless we can stimulate replenishment of the soil and keep the young farmer on the farm and our dairy herds well culled and the census up.

Is that a fair statement? I would like to hear you comment on that.

Mr. GRIDER. I would like to associate myself completely with the remarks of my friend from Missouri, Dr. Hall.

Mr. Chairman, if you will permit an extraneous remark, I thank Dr. Hall for his comments and your comments about this statement.

I think it would not be inappropriate at this time to introduce an intern on my staff, an intern up here for summer training, Mr. David Lynn, who has worked with me long and hard on this subject, and who has had a great deal to do with the preparation of this statement.

These young people work here with practically no salary and become deeply involved, get a great education, and I think we all profit from it.

Thank you so much.

Mr. PRICE. We are glad to see you make such good use of your intern, Mr. Grider.

We are glad to have you here, Mr. Lynn.

The next witness will be Congressman Lynn E. Stalbaum of Wisconsin.

He will be accompanied by Mr. Wilbur Rittmueller.

STATEMENT OF HON. LYNN E. STALBAUM, A REPRESENTATIVE FROM WISCONSIN

Mr. STALBAUM. Thank you, Mr. Chairman. I have filed copies of my statement with the members.

Mr. Rittmueller is with the Dean Food Co. which has purchased the Bowman Dairy. He will be making reference to Dean foods in his statement and these two companies are one and the same.

Prior to entering the Congress I served for 14 years as executive secretary-treasurer of the Racine Milk Producers Cooperative Association, representing farmers who sold milk to dairies, primarily in Racine, Wis., but also to nearby markets.

All of our operation was covered by milk marketing orders—either that which regulated the Milwaukee market or the one which covered the Chicago market.

Under milk marketing orders, mathematical formulas are established for the pricing of milk. There are several different levels or pricing, normally referred to as "classes of utilization." In general, one class covers all milk and milk products sold in bottled form, such as whole milk, skim milk, and cream. A second class covers such products as ice cream, while a third class covers such manufactured products as butter, dried skim milk, and cheese.

The milk marketing orders established these mathematical formulas so that they could be projected into the future. On this basis, milk handlers could know within a few cents what the price would be which they would have to pay to their farmers in any given month. On this basis, they could determine their costs and submit their bids for Government contracts, most of which are let for a 6-months period.

One of the handlers to whom we sold a large volume of milk, the Progressive Dairy Co., of Racine, Wis., a subsidiary of Bowman Dairy in Chicago, successfully bid on this basis on milk contracts at the military establishments at Great Lakes and Fort Sheridan, Ill. I have been informed that they have continued to bid on these, and at the present time are delivering milk under contract to each of these installations.

This year, as a result of marked decline in milk production, the Secretary of Agriculture has seen fit to modify a number of milk marketing orders to increase the return to the dairy farmers, and in so doing hopefully reverse the downward production trend.

These adjustments could not be successfully anticipated by dairies because the prices ordered by the Secretary of Agriculture are minimum prices. Under milk marketing orders, dairies must pay these prices to their farmer-producers. No exception can be made because

they anticipated a lower cost when bidding on a Department of Defense contract.

It is my belief that adjustments directly in line with the adjustments in the order price should be made in these contracts. Not to do so is unfair to these handlers but I also believe it could ultimately be unfair to the Government, because bidders would have to "hedge" their bids to cover any possible upward adjustment in price. For these reasons, I urge the adoption of H.R. 17500.

There is one area, however, which H.R. 17500 does not cover which in my opinion the subcommittee should consider with the thought of amending.

All of the milk marketing orders with which I am familiar base their class pricing on manufactured milk prices in Minnesota and Wisconsin, which in turn are normally closely related to price supports.

Therefore, when price supports were raised to \$3.50 per hundred-weight on April 1 and \$4 per hundredweight on July 1, these upward adjustments could very well reflect themselves in prices for various classes of milk under the milk marketing orders. My interpretation of H.R. 17500 leads me to believe that such price changes would not be basis for contract price adjustments because they are not directly ordered by the Secretary of Agriculture as "increases in the producer prices of fluid milk for beverage purposes."

I would therefore suggest that the bill be amended to provide a basis for contract adjustments wherever it can be clearly shown that the increase in cost to the dealer is the result of actions by the Secretary of Agriculture.

Thank you.

Mr. PRICE. Thank you very much, Mr. Stalbaum.

Mr. Rittmueller, have you a statement?

STATEMENT OF WILBUR RITTMUELLER, DEAN FOODS CO.

Mr. RITTMUELLER. Yes. I would like to present my statement, Mr. Chairman. The members of the committee have copies of it.

At present, the Dean Foods Co. has four Government milk contracts in effect in the States of Wisconsin and Michigan. These contracts are described in schedule A. One has been in effect since January 1, 1966, and will be in effect until December 31, 1966. The others are for a 6-month period with effective dates of May 25, June 1, and July 1, 1966. These bids are usually submitted 1 to 1½ months before effective dates.

Since the submission of these bids we have had unprecedented changes by the Department of Agriculture on the price of raw milk under Federal milk marketing orders which we are regulated under. The following changes have been made by the Department of Agriculture:

1. Effective December 1, 1965, it was ruled that the December 1965, January and February 1966 milk price would be the same as November 1965, and therefore this announcement eliminated the normal seasonal decline of 20 cents per hundredweight which would have been effective under the Federal milk marketing orders.

2. Effective April 10, 1966, the Federal milk marketing orders were amended so that class 1 prices were increased 22 cents per hundredweight through June 1966.

3. Effective July 1, 1966, the Federal milk marketing orders were amended for the purpose of computing class-1 prices for each month beginning July 1, 1966. These amendments provided that the basic formula price would not be less than \$4. The basic formula price would have been \$3.82 per hundredweight so that with this change there was an 18-cent-per-hundredweight increase.

4. On July 1, 1966, the support price on milk, butter, cheese, and milk powder was increased from 75 to 88 percent of parity. As a result of this parity change and a concurrent decrease in milk production, the basic formula prices, better known as the Minnesota-Wisconsin price, have shown a rapid increase from \$3.82 per hundredweight for June, \$4.05 per hundredweight for July, and \$4.26 per hundredweight for August with an additional increase for September to be announced on October 6.

These price increases are without precedent. Never before has the price of milk increased so drastically in such a short period of time. Recent publications indicate that these raises in milk prices have not come to an end. As a result, milk processors obligated under Government bid contracts are caught in an intolerable cost-price squeeze. Losses on these contracts will be enormous and milk processors need some assurance and help, if they are to continue to bid on Government business that an equitable price adjustment will be made for contracts in effect or on contracts to be bid in the future.

The milk processor is able to project normal increases in labor and other costs and a normal increase in milk prices, but when we have unstable raw milk prices that have increased beyond our imagination then we need relief on past and future contracts until we once again have a more stable and orderly milk supply and prices.

It is my opinion that future Government contracts should state which Federal order milk price should be taken into consideration in the bid and should provide that price adjustments be made on total pounds of milk delivered during each month, either over or under the stated milk price.

This also could be accomplished with a monthly change in the bid price after the Federal announcement of milk price on the fifth day of each month, based on a predetermined formula on how milk cost increases or decreases affect the finished package of milk.

Thank you for giving me the opportunity to express the views of the Dean Foods Co. on this matter.

(The schedule referred to by Mr. Rittmueller is as follows:)

SCHEDULE A

Great Lakes Naval Training Center:

1. Date Bid Submitted—April 27, 1966.
2. Contract Amount—\$175,261.20.
3. Contract Period—June 1 through November 30, 1966.

Fort Sheridan, Ill.:

1. Date Bid Submitted—May 19, 1966.
2. Contract Amount—\$85,688.69.
3. Contract Period—July 1 through December 31, 1966.

Camp McCoy, Sparta, Wis.:

1. Date Bid Submitted—December 8, 1965.
2. Contract Amount—\$129,878.00.
3. Contract Period—January 1 through December 31, 1966.

Wurtsmith Air Force Base, Oscoda, Mich.:

1. Date Bid Submitted—March 10, 1966.
2. Contract Amount—\$69,589.60.
3. Contract Period—May 25 through November 24, 1966.

Mr. PRICE. Mr. Rittmueller, will you explain the relationship between price support and Federal marketing orders?

Mr. RITTMUELLER. I feel as the support prices go up then this in turn raises the prices that our class prices are based on, that is Minnesota-Wisconsin.

As these producers of manufacturing products can get more for their products, they are paying more for their milk, and in turn that raises our basic formula price under the orders.

Mr. PRICE. What does the marketing order state? What price do they state in the order?

Mr. RITTMUELLER. They never refer to support prices, as such. Most orders are based on what they call the Minnesota-Wisconsin price. They use that as a formula price, and then these orders have a certain amount they add over this amount each month for use of the milk in these different classes.

Mr. PRICE. Why the designation Minnesota-Wisconsin? Why is that used?

Mr. RITTMUELLER. As I understand it, these are approximately 300 to 350 companies which take the average price they pay to their farmers for their manufacturing products for that month. They add all this together and this is the published Minnesota-Wisconsin price.

Mr. PRICE. Is it usually acceptable to the milk industry throughout the country?

Mr. STALBAUM. The Minnesota-Wisconsin formula to which both of us referred to in our testimony is thoroughly spelled out now in almost every order in the country as the basis from which you start the order prices.

You have to have some starting point, so the Secretary of Agriculture, in hearings throughout the country, determined they would take this average price in the Minnesota-Wisconsin area, which is the normal surplus-producing area, and then each order would have for the various classes of milk an override from this figure.

Basically, therefore, this has been acceptable to the industry, but it is written in each of the milk marketing orders. That is why we are both touching on this.

I want to come back to that further after questioning on the final statement.

Mr. STAFFORD. I wanted to ask for some clarification of the basic formula prices that were commented on here on page 2 of your statement, Mr. Rittmueller.

That is the basic price, I imagine, that our distinguished colleague, Mr. Stalbaum, was speaking to?

Mr. RITTMUELLER. That is right.

(Additional information is furnished later in the record.)

Mr. STAFFORD. And not a blend price or a class-1 price, class-2 price, or class-3 price?

Mr. RITTMUELLER. That is right. That is the price which in most orders determines what the final price will be which we pay for the milk which goes into the milk bottle.

Mr. PRICE. Mr. Rittmueller, you have a schedule of your existing contracts on the final page of your statement.

Have you estimated what your anticipated loss would be on those four contracts in the event relief is not granted in some way?

Mr. RITTMUELLER. Well, in the majority of the cases it will be approximately 20 to 40 percent below what our estimates were for a given month. It would depend on when we start. The one that starts January 1 would show it to be quite a bit out of line. Naturally there we had three other increases since which we could not anticipate.

When you get to that one starting in June you have had some indication of perhaps point No. 1 being in effect, so down the line they do decrease as far as the loss factor is concerned.

The one starting sooner naturally would be higher because the raw costs there have gone a lot higher, much higher than we had anticipated.

There is a loss factor here and I would like to comment, too, that we noticed under one bid that already the commissary has gone by their original request on butter. I believe we bid on 9,000 pounds back there. They are now telling us we are not living up to our contract. We say we have already supplied the full contract.

Naturally we are reluctant because when we bid butter it was 69 cents, and that is what we bid on. Now the price is 79 cents.

Mr. PRICE. Why do they say the user is not living up to its contract if you have already supplied the 9,000 pounds?

Mr. RITTMUELLER. They are attempting to get more because they still have these sales from the commissary.

Mr. PRICE. Was it estimated, or was it a firm figure?

Mr. RITTMUELLER. It was—well, normally the contract states a firm figure with variations of 10 percent.

Mr. PRICE. Any other questions, gentlemen?

Mr. HALL. Do you furnish dried milk to posts, camps, and stations of the military?

Mr. RITTMUELLER. No, sir.

Mr. HALL. Do you furnish any for the Department of Defense to use overseas in the mechanical cows?

Mr. RITTMUELLER. No. We have very little or no powered business—actually we have none.

Mr. HALL. To your knowledge do other big food and dairy companies furnish and produce to the Department of Defense for overseas transportation or directly supply overseas posts, camps, and stations?

Mr. RITTMUELLER. I believe so. We have bids coming in all the time for this article, but we are not in that line of business.

Mr. STALBAUM. Most of the manufactured milk products come from northern Wisconsin and Minnesota in separate classes, separate from the fluid milk operations you find around the large cities.

I would expect that the plants which are supplying those, getting contract awards in those instances, more normally are in the manufactured milk business.

Mr. HALL. I certainly thank you, gentlemen. I know that we all appreciate this.

If we would implement what you recommend, Mr. Rittmueller, with regard to the future Government contracts plus what H.R. 17500 does, plus the additional corrections that Congressman Stalbaum makes, wouldn't that take the gamble out of bidding, practically?

Mr. RITTMUELLER. Yes.

Mr. HALL. It would be ideal, but would it come dangerously close to fixing prices?

Mr. RITTMUELLER. I don't believe—

Mr. HALL. Legislative fixing of prices?

Mr. RITTMUELLER. Let me just say that for the last 5 years if you look at your raw-milk costs you might have had gradual increase over the year of from 5 to 10 cents a year, so that at that time you did have a very stable price which we are practically asking for now.

The thing that has come about is this: When we have a dollar increase in a year's time no one could have predicted this. I feel there was one other point—

Mr. HALL. I understand that thoroughly, if I may interject.

As of now I have no doubt about that.

My question addresses itself as to how far we go in rendering you perfectly safe from any risk in the open market place of competitive bidding.

Mr. RITTMUELLER. I may say that the University of Illinois has this built in to their contracts now. They definitely state a price on which you base your bid, like, say, the Chicago announced class 1 price. Then they have these factors already built in with regard to any increase or decrease.

It could very well be that with this built in you also would have some decreases if this milk supply starts coming back again.

Mr. HALL. That is all I have, Mr. Chairman.

Mr. LOVE. Would it not be helpful to know the estimated losses on each of these?

Mr. RITTMUELLER. We got a general response to that.

Mr. LOVE. I understand.

Mr. PRICE. Could counsel be more specific on estimated losses on the contract you mentioned in schedule A of your statement?

Mr. HALL. Those things are economically secure facts at times.

Mr. RITTMUELLER. I didn't estimate that. I could send you this information, if you so desire.

Mr. STAFFORD. Supply it for the record.

Mr. PRICE. Would you supply it for the record?

Mr. RITTMUELLER. Yes.

(The information requested was not received at the time this paper went to press.)

Mr. PRICE. Thank you.

Mr. Morgan?

Mr. MORGAN. From a business practice what do you normally do in checking with your suppliers prior to bidding on a contract to assure that you will have a quantity of milk to meet the requirement of the bid at a reasonable price to yourself?

Mr. RITTMUELLER. You mean so far as having a supply available, or the paid price?

Mr. MORGAN. So far as having a supply available, as well as an agreed price.

Mr. RITTMUELLER. First of all, as far as the supply available is concerned, we have not run into this situation until the beginning of this year when milk started on the decline.

Now, there is an area there of having some problems during some part of the week, having enough milk. You hit Wednesday and Thursday and Friday when you practically produce 65 percent of the milk supply. This is the way the grocers and big chains sell their milk. Monday and Tuesday is not as large.

Secondly, these are regulated under the Federal orders, so you know from the regulations when the milk is going up and when it is supposedly coming down.

Mr. MORGAN. How far in advance do you know, normally?

Mr. RITTMUELLER. You should know it for the whole year. Normally you have a decrease under the one I am talking about of 20 cents in December.

Mr. MORGAN. A seasonal decrease?

Mr. RITTMUELLER. Yes.

Then there is another decrease of 20 cents in March.

Mr. MORGAN. Are these controlled by Federal marketing orders?

Mr. RITTMUELLER. Right.

Then on July 1 it goes up 20 cents. In August it goes up 20 cents more.

Therefore, what has happened here is that they have eliminated these seasonal decreases and practically put, say, a yearly price on the milk we are buying.

However, in addition to that you have had a shortage coming up up so that this has boosted the paid price over and beyond these things.

Mr. MORGAN. So you are not concerned about price from the supplier, because you will have to pay him whatever the Department of Agriculture tells you to pay?

Mr. RITTMUELLER. We have to, that is right.

Mr. MORGAN. Have you ever requested the Department of Agriculture or the Department of Defense to exempt the milk procured to satisfy defense contracts?

Mr. RITTMUELLER. We have never done that; no.

Mr. STALBAUM. I doubt if it is permitted in the order. I doubt if the Secretary can waive any portion of that on a pricing basis within a class.

Mr. RITTMUELLER. I could say this: As you know, under these Federal milk marketing orders you have constantly Federal hearings to amend the orders. All of these changes have to go through a hearing.

I testified in the one in St. Louis. At that time I asked for relief from the Department on any Government contracts we might have at that time.

If there was a price increase to give us credit on this amount.

However, in their decision they definitely covered this point and said we were not entitled to it, or they did not see any reason for us to receive this.

Dealers in these hearings have asked for relief on that portion of the business where we sell to the Government.

Mr. PRICE. Relief in what way?

Mr. RITTMUELLER. That if the price of milk, as stated here, if it went up 22 cents, that we would get credit on the milk we sold the Government, and it would not take the 22-cent increase.

Finally what it would amount to is that it would have to come out of the price we paid to the farmer.

Mr. PRICE. Where would you get your supply if you reduced the price paid to the farmer?

Mr. RITTMUELLER. Actually, I feel that the final paid price to the farmer, when you take the Government contract into consideration—

and I have not estimated or figured this out—normally it is a very small amount per hundredweight, when you do not put this increase into effect on Government contracts. They did not see fit to do this, however.

Mr. PRICE. Any other questions?

Mr. Stalbaum.

Mr. STALBAUM. Two comments I would like to make on the questioning. First, of Congressman Hall: Permit me to point out that this does not get into bonuses or premiums that the dairies now have to pay.

There is nothing anticipated in Mr. Rittmueller's testimony or mine that this ever would be covered. This is a hazard that they still will continue to bear, and it is a very real one in the Chicago area at the present time.

It was pointed out to us that they are having to pay premiums over the order of prices. Even with the passage of this bill or amendments to it, this would still not be covered?

Mr. HALL. Is that based on quality?

Mr. STALBAUM. Volume. All of this is grade A milk. There may be some premium for constancy of delivery.

The group I represented had a full supply contract with the subsidiary that I mentioned, Progressive Dairy, and there were times when they gave us some premium because we did assure a full supply. All of it being grade A milk, there is no special premium for quality.

Mr. HALL. Does that go right down to the producer, the premium or the bonus?

Mr. STALBAUM. It does.

Mr. HALL. Is it based on excessive butterfat, for example?

Mr. STALBAUM. There are differences in pricing because of butterfat, but we don't normally consider that a premium.

There might be other premiums or surcharges paid to other plants which do not go completely to the producer.

Where you have a producer delivering on a daily basis to a milk plant, such as we are talking about here, the milk coming from the farmer right to this dairy, then the premium does go directly to that farmer.

There may be cases when they have to go to northern Wisconsin to buy milk, and then they may only go to the plant and that handler can divide it up as he sees fit.

Mr. HALL. Is it ever based on low bacterial count in the milk, for example, or sanitation in handling, or is a premium given for a certain kind of pallor to a certain producer?

Mr. STALBAUM. Not basically.

The last premiums we had of this type were for those farmers shipping milk through bulk milk train.

Mr. HALL. Premiums and bonuses as a whole—and I am glad you pointed this out—compared with the loss that might be endured by the processor on a contract, is a relatively small percentage of the total figure of loss. Is that correct?

Mr. STALBAUM. It can vary.

Mr. Rittmueller?

Mr. RITTMUELLER. The premium that Congressman Stalbaum referred to is what is happening in the Chicago market.

We are not realizing an excess of producers going to other markets. In other words, they are coming up into Wisconsin now all the way from Indianapolis, from Fort Wayne, from Cincinnati, from Cleveland, and setting up receiving stations right up there. This is due to the fact they have a much higher class 1 price.

Just as an example, Cincinnati is \$5.64. Chicago now is \$5.22.

Cleveland has gone over and above the Federal order price. They have negotiated directly with the co-ops. They are presently paying \$6.10. Therefore, these people can come all the way up into Wisconsin because of this higher price that they are willing to pay and getting off their customers, and they are able to take our farmers down to that area.

Of course, what you have there, then, is that when they pay their farmers more and our blend does not come up to that, and that is the price which under the order we would pay, say we have a farmer right across the road, Cincinnati's blend or the Indianapolis blend could come to \$4.78, and our blend under the Chicago market comes out to \$4.68—it will not be too long before that farmer becomes unhappy.

Therefore, you start paying the premiums to keep them happy, and not to go to the other market because, after all, without milk we have no business.

Mr. HALL. It amounts to fair wear and tear, and bonuses and premiums are simply a factor in competitive enterprise and competition under the law of supply and demand. Is that right?

Mr. HALL. Any contractor would consider all of these factors in normally making an advance contract for fulfillment.

Mr. RITTMUELLER. That is right

The other point is this: Take in the State of Michigan right now. They are under the Federal order over there in southern Michigan. Their announced class 1 price at this time is \$5.10. The co-op says "We will not sell you the milk at \$5.10. Your price as of August 1 is \$6.10."

So you have even a dollar premium over the Federal order price because these people say that even under this Federal system they are not getting enough for their milk to keep the farmers in business.

Mr. HALL. It is all pretty academic as the general supply of milk decreases relative to population. Is that not correct?

Mr. RITTMUELLER. Yes, and it could be that in the Government, when you are bidding close, and you do on Government bids, that you will look for the business you can make a better return on. So you can bypass the Government bids knowing that you will be short, anyhow. Where will you sell it?

Mr. HALL. Exactly.

Mr. RITTMUELLER. That is where you will make the most money, which will be the consumer.

Mr. HALL. Exactly. And that is a serious consideration for this committee in looking out for the maintenance of the Army, which is our constitutional requirement.

Mr. RITTMUELLER. Right, especially when you have a price announcement and you can raise the price to the consumer.

Mr. HALL. That is a matter of the left hand not knowing what the right hand is doing.

Mr. RITTMUELLER. When you are stuck for six a year you will be especially careful from now on, I would say.

Mr. STALBAUM. On the four points which Mr. RITTMUELLER detailed on pages 1 and 2, and in line with my suggestion for amending bill 16500, the first three, if I read them correctly, would be clearly covered by the present bill.

However, item 4 is the type of thing to which I had reference which is not now covered, which is clearly an action of the Department of Agriculture, but not an action within a milk order.

I am suggesting that that type of adjustment, based on announced parity changes, and so forth, also should be considered.

I want to point out to the committee that here is a very clear detailing of the types of price changes that have occurred, both of which would be covered by the bill as now written and the one which would not be covered.

Mr. PRICE. Thank you very much, Congressman Stalbaum and Mr. Rittmueller. You have both made fine witnesses and given us some very valuable information.

The next witness will be Mr. William Harsh, representing the author of this bill, our colleague, Frank E. Evans of Colorado, who is unable to be with us today because he is in Colorado.

Mr. Harsh will be accompanied by Mr. John W. Gray, president, Sinton Dairy, Colorado Springs, Colo.; and by Mr. Gary N. Herbert, attorney.

Mr. Harsh?

Mr. HARSH. Mr. Chairman, I am administrative assistant to Congressman Evans, who has asked me to present his statement.

Mr. PRICE. Proceed, Mr. Harsh.

STATEMENT OF HON. FRANK E. EVANS, REPRESENTATIVE FROM COLORADO, PRESENTED BY WILLIAM HARSH, ADMINISTRATIVE ASSISTANT

Mr. HARSH. (reading testimony of Congressman Frank E. Evans). Mr. Chairman and members of the subcommittee, I wish to express my appreciation to all of you for the time and attention which you are devoting to the problem with which H.R. 17500 and similar legislation is concerned. I also want to introduce Mr. John Gray of the Sinton Dairy Co., of Colorado Springs and Pueblo, and Mr. Gary Herbert who is the lawyer for the company.

The problem to which H.R. 17500 is directed is the loss inflicted upon milk companies contracting with the U.S. Government as a result of increases in base milk prices by the Government. All possible remedies short of legislation have been fully investigated and it is my belief that this hardship can only be cured by favorable action on the bill which is before you. I would like your permission to insert an exchange of correspondence at the close of this testimony as a part of the record in order to show the position of the contracting authorities of the U.S. Government in regard to this problem.

Mr. PRICE. Without objection that may be done.

Mr. HARSH. The Sinton Dairy Co. is a prime example of the serious consequences involved in the current situation. It contracted in good faith with the Government using, I might add, forms prepared by the Government for that purpose. If no remedy were made available, this company would be in the position not only of servicing this con-

tract at a loss but of running a loss on its entire operations as a result of the sizes of losses involved in this contract. I do not believe that it is equitable for the Government to expect performance of such a contract or to insist on placing a private business in such a position particularly when it is an action by the Government which is the prime cause of the unforeseen change in circumstances.

I believe that it is in the long-term best interests of the Government to approach this kind of situation flexibly and fairly because there is a dollar value in having private business feel confident in its contracting relations with the Government. If there is lack of confidence and lack of flexibility the contractor must include in his bid a margin to protect him from unforeseen events. In the end I believe that this will be more costly to the Government than pursuing a policy of flexibility.

The bill you have before you would remedy the inequitable situation facing the Sinton Dairy Co. and would authorize the inclusion of language in future contracts which would prevent any recurrence of the problem. I know that the members of this subcommittee will devote sympathetic attention to the problem as explained by Mr. Gray of the Sinton Dairy Co.

(The correspondence previously referred to is as follows:)

DEFENSE SUPPLY AGENCY,
Alexandria, Va., August 23, 1966.

Hon. FRANK E. EVANS,
House of Representatives,
Washington, D.C.

DEAR MR. EVANS: This is in reply to your letter of 11 August 1966 on behalf of Sinton Dairy Company and its Contract DSA 133-2569 for milk.

After the conference with representatives of the Company we carefully reviewed its proposal that the contract be terminated for the convenience of the Government. Our review developed no basis upon which the requested action could properly be taken. Enclosed is a copy of my letter to Mr. Herbert explaining the reasons for this conclusion.

It is unfortunate that the Sinton Dairy, and other firms, are experiencing hardship because of the Department of Agriculture Orders increasing the producer prices. The contract, however, contains no provision that would permit an increase in the contract price because of an increase in the producer price upon which it was based. Other dairies that were similarly affected by the Department of Agriculture Orders have requested price adjustments from the Comptroller General. I am enclosing a copy of his decision in a similar case in which he held that there was no legal basis on which he could grant relief.

Since the contract prices cannot be increased, and the contract could not be terminated for the convenience of the Government, I know of no action which could be taken by this Agency to afford the Company relief under its present contract. To provide some assistance for the future, however, efforts are being made to limit the period of our milk contracts to three months. By having shorter term contracts the contractor will not be required to bear the risk of price increases for an extended period of time.

Sincerely,

ALBERT RABY, Jr.,
Assistant Counsel.

DEFENSE SUPPLY AGENCY,
Alexandria, Va., August 23, 1966.

GARY N. HERBERT, Esq.
Colorado Springs, Colo.

DEAR MR. HERBERT: Reference is made to our conference on 10 August 1956 concerning the Sinton Dairy Company and its Contract DSA 133-2569 for milk.

At the conference we agreed that there was no basis upon which the prices in the current contract could be increased. You suggested, however, a possible

method of affording some relief to your client from the effects of the increased producer prices established by the Department of Agriculture. Your suggestion was that the contract be terminated under those provisions which authorize termination for the convenience of the Government, and that the remaining requirements be obtained by a new contract awarded after competitive solicitation. You indicated that you feel that such action could properly be taken in view of those provisions of the Small Business Act (15 USC 631) which express a policy of Congress to assist small business. At the conference I indicated to you, and to Mr. Gray of Sinton Dairy, that, although it was very doubtful that the suggestion could be adopted, the possibility would be carefully considered.

Ordinarily contracts are terminated for the convenience of the Government where the quantities required have been reduced, or where the item is no longer needed. The convenience termination provisions give the Government a contractual right to do what would otherwise be a breach of contract. I have been unable to find any case which supports such termination action where the effect would be that the Government would give up a contractual right to receive supplies at specified prices and thereafter obtain those supplies at higher prices from the same or a different contractor.

A careful review of the Small Business Act does not disclose any provision which could be used as authority for the action you suggested. While the Act does expressly provide for small business firms receiving financial assistance in the form of loans, and for small business firms to receive a fair proportion of contract awards, it does not authorize the Government to give up vested rights under a contract as one of the methods of assisting small business.

The difficult position of your client, as well as the many other dairies similarly affected by the Department of Agriculture Orders, is recognized. Under the circumstances, however, I know of no basis upon which the course of action you proposed properly could be taken.

Sincerely,

ALBERT RABY, Jr.,
Assistant Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES.
Washington, D.C., April 18, 1966.

B-158738

CITY DAIRY,
Woonsocket, R.I.
(Attention Mr. Joseph F. Sarrasin, Vice-President).

GENTLEMEN: Reference is made to your letter of March 14, 1966, in which you request our intervention in a recent decision by the Department of Agriculture to adjust Class I milk prices for April, May and June 1966.

Because you currently hold contracts for supplying milk to Fort Devens, Westover Air Force Base, and Hanscom Air Force Base, all in Massachusetts, which were entered into with the original Class I formula as a determinant for the price agreed to, it is alleged that any suspension of this formula will cause irreparable harm and financial loss. In the alternative to our intervening in the decision to adjust the Class I milk prices the question was raised by you as to the possibility of modifying the contract price during the period of April, May and June 1966.

In decision, 19 Comp. Gen. 903, our Office considered a situation similar to the one presented. Quoting first from *Satterlee Adm. v. United States*, 30 Ct. Cl. 31, the rule was stated:

"If the law casts a duty upon a party, the performance will be excused if by the act of God it becomes impossible; but if a party engages to do something and fails to provide against contingencies the nonperformance is not excused by a contingency not foreseen and which by its consequence increases the cost and difficulty of performance."

We went on to say:

"Nor is the fact that the increase in cost of milk to the contractor is attributable to the milk marketing order issued by the Secretary of Agriculture of avail to change the rule. In promulgating said order the Secretary acted, pursuant to authority imposed in him by an act of Congress and as the ordained representative, for the purpose, of the Government in its sovereign capacity. The courts have held that the Government in its sovereign capacity is separate and distinct

from the Government in its capacity as a contractor and is not liable as a contractor for its acts as a sovereign."

The general rule is that officers of the Government have no authority to amend or modify existing contracts unless a compensating benefit results to the United States; and that supervening events or unforeseen causes which render contract performance more burdensome, or less profitable, or even occasion a loss, are not sufficient to entitle a contractor to an adjustment in the contract price.

It should be made clear that this Office cannot intervene in any decision to fix prices for Class I milk. That is a matter solely within the province of the Department of Agriculture.

Accordingly, there is no legal basis upon which this Office may grant your requests.

Very truly yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

AUGUST 30, 1966.

Re Contract DSA 133-2569 for milk, Sinton Dairy Company, Colorado Springs, Colorado.

Mr. ALBERT RABY, Jr.,
*Assistant Counsel, Defense Supply Agency Headquarters,
Cameron Station,
Alexandria, Va.*

DEAR MR. RABY: Thank you very much for your letter of August 23 regarding the difficult situation the Sinton Dairy Company finds itself in under its contract with your offices to supply milk to Fort Carson, Ent Air Force Base, and the United States Air Force Academy, all in Colorado Springs, Colorado.

It would appear that there are no legal grounds for the Government to terminate the contract and then re-negotiate or open the contract for competitive bids.

In the absence of a statute prohibiting the same, I wonder if it would be possible for the U.S. Government and the company to mutually agree to change the terms of the contract in regard to a factor neither party anticipated at the time the contract was executed.

Since the company stands to lose nearly \$15,000 a month as a result of the action of the Department of Agriculture under the new milk marketing order, it would seem equitable to consider amending the contract.

Therefore, in the absence of such statute precluding the same, may I suggest that equity would appear to me to speak strongly in favor of a renegotiation by mutual consent of both parties. I would appreciate your views on this question immediately.

Most sincerely yours,

FRANK E. EVANS,
Member of Congress.

DEFENSE SUPPLY AGENCY,
HEADQUARTERS, CAMERON STATION,
Alexandria, Va., September 2, 1966.

Hon. FRANK E. EVANS,
*House of Representatives,
Washington, D.C.*

DEAR MR. EVANS: This is in reply to your letter of 30 August 1966 asking whether the terms of the Sinton Dairy Company Contract DSA 133-2569 for milk can be modified by mutual consent in view of a factor neither party anticipated at the time the contract was made.

As indicated in my letter of 23 August 1966 the difficult situation of the Sinton Dairy Company is recognized. The Comptroller General of the United States, however, has consistently ruled that in the absence of any compensating benefit to the Government under the contract a contracting officer would have no authority to modify an existing contract to increase the prices. These rulings are, of course, binding on our contracting officers and were reaffirmed in the City Dairy case.

Since under the decisions of the Comptroller General the contracting officer could not increase the contract prices without consideration, and there is no present need by the installations involved for any changes in the terms of the contracts, there seems to be no basis upon which the contract could now be changed by mutual consent to increase the prices.

Sincerely,

ALBERT RABY, Jr., Assistant Counsel.

PLAINS CREAMERY, INC.,
Amarillo, Tex., September 17, 1966.

Hon. FRANK E. EVANS,
House Office Building,
Washington, D.C.

DEAR SIR: On February 25, 1966, on the basis of a close study of milk prices for the two previous years of 1964 and 1965, (Prices attached as received from United States Department of Agriculture for 1964, 1965, and January through September, 1966) Plains Creamery, Inc. submitted a bid on various milk products to Amarillo Air Force Base, Amarillo, Texas, for the supply of dairy products to the base for the period of March 25, 1966, through March 24, 1967. Plains Creamery was low bidder by approximately \$20,000 on an estimated \$1,000,000.00 contract. It should be noted that a one year contract is somewhat unusual, since the majority of such contracts are for a period of six months and some for three months. This contract is set aside for Small Business, and Plains Creamery qualifies for the designation of "small business" under the SBA Act of 1958.

In addition to carefully estimating raw milk costs based on the average for the past two years, I visited with Mr. Byford Bain, Market Administrator for the Texas Panhandle Marketing Order. Mr. Bain advised me that we would probably experience a slightly higher price for raw milk in 1966. His best estimate was an increase of from fifteen to twenty-five cents per hundred weight higher average cost in 1966 over the 1965 average Class I price. We used the 1965 average class I price of \$5.33 and added fifteen cents (\$5.48) to compute our raw milk cost for this contract.

On March 1, 1966, four days after we bid the contract, we received the enclosed wire from Mr. Byford Bain, Market Administrator, advising us the U.S. Department of Agriculture has suspended the Seasonal Drop in Class I price effective March 2, 1966. This seasonal drop of thirty cents per cwt. is normally in effect for the months of March, April, May, and June. The results of this and other actions by the Department of Agriculture by increasing support prices have resulted in our experiencing an average Class I price of \$5.99 for six months compared to \$5.22 for this same period in 1965.

	1966	1965
April.....	\$5.77	\$5.07
May.....	5.71	5.08
June.....	5.72	5.07
July.....	6.13	5.35
August.....	6.20	5.36
September.....	6.41	5.40
Average.....	5.99	5.22

This action by the Secretary of Agriculture has placed Plains Creamery in the position of losing over \$35,000.00 in 6 months. Our monthly loss becomes increasingly greater. We estimate our loss in September, 1966, to be \$10,000 compared to a loss of \$3000 in April, 1966.

We have applied for an adjustment through the Department of The Air Force, Wright-Patterson Air Force Base, Ohio. We have been advised it is being considered under the provisions of Public Law 85-804 as implemented by Section XVII of the Armed Services Procurement Regulation.

Sincerely yours,

L. B. PARKER, President.

DALLAS, TEX., March 1, 1966.

PLAINS CREAMERY,
Amarillo, Tex.:

The U.S. Department of Agriculture has suspended, effective March 2, 1966, and for the remainder of March, the seasonal drop in class I price differentials.

BYFORD W. BAIN,
Market Administrator.

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE,
TEXAS PANHANDLE MILK MARKETING AREA,
Dallas, Tex., August 15, 1966.

PLAINS CREAMERY,
Amarillo, Tex.

GENTLEMEN: In accordance with a request made through Mr. Floyd L. Haynie of our Amarillo office, we are enclosing a schedule which shows the minimum prices established for Class I and Class II milk in the Texas Panhandle marketing area by months from January 1964 through August 1966. We have also included for the same period of time the butterfat differentials applicable for Class I and Class II milk.

Yours very truly,

CHAPMAN E. DUNHAM,
Acting Market Administrator.

Official announcement of class prices¹ and butterfat differentials for the north Texas, central west Texas, Texas Panhandle, and Lubbock-Plainview, Tex., marketing area

FOR THE MONTH OF AUGUST² 1966

	North Texas	Central west Texas	Texas Panhandle	Lubbock-Plainview
Class I price ³	\$6.37	\$6.62	\$6.20	\$6.47
Class II price	4.095	4.095	4.12	4.10
Class II-A price		3.728		
Butterfat differential to handlers—Class I	.089	.089	.085	.089
Butterfat differential to handlers—Class II	.084	.084	.080	.084
Butterfat differential to producers	(5)	.088	(5)	(5)

FOR THE MONTH OF SEPTEMBER 1966

	North Texas	Central west Texas	Texas Panhandle	Lubbock-Plainview
Class I price ³	\$6.53	\$6.78	\$6.41	\$6.63
Class I butterfat differential to handlers	.091	.091	.088	.091

¹ Prices per hundredweight for milk testing 3.5 percent butterfat.

² Price quotations and formula prices used to compute class prices:

Minnesota-Wisconsin pay price—3.5 percent butterfat	\$4.26
Butter-powder formula price—4 percent butterfat	* 4.515
Cheddar cheese formula price—3.5 percent butterfat	3.728
Average price 92 score butter, Chicago	.7305
Average price, nonfat dried milk spray	.1963
Average price, per pound of cheddar cheese (Wisconsin primary markets)	.4938

³ These class I prices are subject to location adjustments.

⁴ Class II and II-A butterfat differential.

⁵ Not available at release date Sept. 6, 1966.

^a Class II butter-powder formula price for each market is adjusted to 3.5 percent butterfat content by subtracting 5 times the class II butterfat differential for each respective market.

NOTE.—Supply-demand adjustment—north Texas market, plus 2 cents.

Texas Panhandle marketing area

	Class prices (per hundredweight)		Butterfat differentials (cents per point)	
	Class I	Class II	Class I	Class II
January 1964	\$5.31	\$3.04	7.0	6.4
February	5.32	3.03	7.0	6.4
March	5.01	2.90	7.0	6.4
April	5.00	2.90	7.0	6.4
May	4.97	2.90	7.0	6.4
June	4.97	2.90	7.0	6.4
July	5.26	3.03	7.0	6.4
August	5.27	3.11	7.0	6.5
September	5.30	3.18	7.1	6.7
October	5.39	3.14	7.4	6.7
November 1	5.45	3.22	7.3	6.8
December	5.54	3.08	7.5	6.5
Average	5.23	3.04	7.1	6.5
January 1965	5.54	3.03	7.1	6.4
February	5.50	3.04	7.0	6.4
March	5.07	2.90	7.0	6.4
April	5.07	2.94	7.0	6.5
May	5.08	2.95	7.1	6.5
June	5.07	2.94	7.1	6.5
July	5.35	3.08	7.1	6.5
August	5.36	3.17	7.1	6.7
September	5.40	3.21	7.3	6.8
October	5.44	3.25	7.5	6.9
November	5.49	3.27	7.5	7.0
December	5.54	3.27	7.6	7.0
Average	5.33	3.09	7.2	6.6
January 1966	5.62	3.12	7.6	6.5
February	5.62	3.22	7.1	6.8
March ²	5.72	3.18	7.4	7.0
April ³	5.77	3.25	7.6	6.9
May	5.71	3.34	7.5	7.0
June	5.72	3.45	7.6	7.3
July ⁴	6.13	3.97	7.9	7.8
August	6.20	4.12	8.5	8.0
September	6.41		8.8	

¹ Average price, Nov. 1 through 20, \$5.42, Nov. 21 through 30, \$5.52.

² Average price, Mar. 1, \$5.43, Mar. 2 through 31, \$5.73.

³ Average price, Apr. 1 through 9, \$5.83, Apr. 10 through 30, \$5.75.

⁴ Average price, July 1 through 4, \$5.97, July 5 through 31, \$6.15.

All prices are for milk testing 3.5 percent butterfat.

CLARDY-CAMPBELL DAIRY PRODUCTS, INC.,
Roswell, N. Mex., September 17, 1966.

Hon. FRANK E. EVANS,
House of Representatives,
Washington, D.C.

DEAR SIR: I talked to Mr. John Grey of Sinton's Dairy, Colorado Springs, Colorado this morning regarding HR 17500. Mr. Grey told me that a hearing will be held with the Armed Services Committee, Tuesday September 20, 1966 with regard to possible relief on military milk contracts. Because of the short time I am sending the enclosed material direct to you and with copies to our New Mexico Congressmen Tom Morris and Johnny Walker.

We are concerned with a Dairy Products Sub-Contract at Cannon AFB, New Mexico, bid February 28, 1966, effective for 12 months from March 25, 1966 to March 24, 1967. Since the effective date of this contract the U.S. Department of Agriculture has changed dairy products support prices and put into effect several emergency increases on Class I milk prices. We are a small independent dairy and just cannot afford the losses of over \$1,000.00 per month in supplying this contract.

The enclosed work sheets show our costs and the sales returns on the various dairy products delivered to the Commissary and Mess Halls at Cannon AFB, New Mexico during August 1966.

Yours very truly,

WALTER F. JENTGEN,
Executive Vice President and General Manager.

Analysis—Cannon AFB

Units sold, August 1966

	Units	Unit price	Amount	Cost	Amount
Bulk, homogenized	4,548	\$0.70	\$3,183.60	\$0.6817	\$3,100.37
Bulk, chocolate	1,424	.75	1,068.00	.7617	1,084.66
One-half gallons homogenized	10,006	.36	3,602.16	.3552	3,554.13
One-half pints, homogenized	3,216	.06	192.96	.0556	178.81
One-half pints, whipping cream	205	.30	61.50	.2136	43.79
Quarts, chocolate	493	.22	108.46	.2001	29.83
One-half pints, chocolate	336	.065	21.84	.0605	20.33
One-half gallons, 2 percent	4,016	.30	1,204.80	.2970	1,192.75
One-half gallons, buttermilk	234	.30	70.20	.2970	36.25
Quarts, buttermilk	222	.15	33.30	.1549	34.39
8-ounce sour cream	413	.25	103.25	.2145	88.59
12-ounce dip	61	.50	30.50	.2492	15.20
One-half gallon orange	591	.25	147.75	.2233	131.97
4-ounce cottage cheese	696	.25	174.00	.2202	153.26
Pounds, butter	196	.85	166.60	.8125	159.25
Unsalted butter	227	.85	192.95	.8125	184.44
Pressurized whipping cream	96	.65	62.40	.4642	44.56
Slices, gallon ice cream	352	1.40	492.80	1.05	369.60

\$10,917.07 less 1 percent	\$10,807.90	\$10,422.18
Less subcontract fee	750.00	
		10,057.90
Selling price		10,057.90
Cost		10,422.18
Gross loss		(364.28)
1-man wages		400.00
Truck expense		425.00
Net loss		(1,189.28)

	Fluid	Carton	Rentals and royal- ties	Proc- essing	Hand- ling	Freight and pack- ers	Total
Bulk homogenized	0.5452	0.0674	-----	0.0285	0.0406	-----	0.6817
Bulk chocolate	.6252	.0674	-----	.0285	.0406	-----	.7617
½ gallon, homogenized	.2726	.0260	0.0111	.0280	.0175	-----	.3552
½ pints, homogenized	.0341	.0078	.0027	.0088	.0022	-----	.0556
½ pints, whip	.1879	.0120	.0027	.0088	.0022	-----	.2136
Quarts, chocolate	.1563	.0165	.0045	.0140	.0088	-----	.2001
½ pints, chocolate	.0391	.0077	.0027	.0088	.0022	-----	.0605
½ gallon, 2 percent	.2144	.0260	.0111	.0280	.0175	-----	.2979
½ gallon, bulk milk	.2144	.0260	.0111	.0280	.0175	-----	.2970
Quarts, bulk milk	.1072	.0204	.0045	.0140	.0088	-----	.1549
8-ounce, sour cream	.2050	-----	-----	-----	-----	.0095	.2145
12-ounce dip	.2350	-----	-----	-----	-----	.0142	.2492
½ gallon, orange	.1400	.0288	.0090	.0280	.0175	-----	.2233
4-ounce cottage cheese	.1850	-----	-----	-----	-----	.0352	.2202
Pounds, butter	-----	-----	-----	-----	-----	-----	.8125
Unsalted butter	-----	-----	-----	-----	-----	-----	.8125
Pressurized whip	.4500	-----	-----	-----	-----	.0142	.4642
Gallon, sliced, ice cream	-----	-----	-----	-----	-----	-----	.0105

Class-I price, f.o.b., Clovis, N. Mex., Rio Grande Federal Milk Market Order No. 133.
Class-I price, September 1966, 6.34 hundredweight.

SHAMROCK DAIRY,
Tucson, Ariz., September 19, 1966.

Hon. FRANK E. EVANS,
House of Representatives,
Washington, D.C.

DEAR MR. HIRSH: This letter is being sent to you at the recommendation of Mr. John Gray, General Manager, Sinton Dairy, Colorado Springs, Colorado. John and I have discussed by telephone at some length in recent weeks the inequities and injustices of the United States Government's action in raising milk processors' cost of Class I and Class II milk without also giving us relief on our Government contracts to supply military installations with fluid milk and dairy products. We appreciate the concern and assistance of Congressman Evans in preparing a Bill to correct this situation.

As you know, Government bids for milk products in recent years usually have covered a period of 12 months and it is impossible to anticipate substantial changes in Class I and Class II milk, either increased or decreased, during that length of time; however, fluctuations have been of a minor nature until 1966 and this year Class I and Class II prices have increased so tremendously that, on a monthly basis, our losses due to these increased prices have been very heavy. To explain our situation in Arizona I am enclosing herewith statistics showing this effect for the months of March through July 1966. You will notice that our figures are shown separately for United States Government facilities served from our Phoenix plant, Shamrock Dairy of Phoenix, Inc., and our Tucson plant, Shamrock Dairy, Inc., as these are separate corporations.

At the time we bid these contracts early in February 1966 we had available to us from the Milk Market Administrator, Central Arizona Order No. 131, information as to the February Class I price as it was announced February 6, 1966; we had available the Class II price for January 1966 as it was announced also on February 6th. On the basis of these price announcements, and judging the trend of pricing in previous months, we submitted our bid quotations. The statistics furnished to you indicate our increased cost of Class I and Class II milk over and above the February 1966 Class I price and the January 1966 Class II price.

If you will notice, our losses due to increasing prices were much greater in June and July 1966. August information was not available at this writing. The Davis-Monthan contract, Tucson, Arizona, does not expire until late in February 1967 and we anticipate the losses under this contract for the months August 1966 through February 1967 to be substantially higher as Class I and Class II prices continue to increase.

This information is being sent to you Air Mail Special Delivery. If we can compile and have available additional information that you may need, please let me know. Also, if we can assist in testimony before the proper Congressional body, we will be happy to do so.

Yours truly,

NORMAN P. McCLELLAND,
Vice President.

Shamrock Dairy of Phoenix, Inc., Phoenix, Arizona

Product pounds delivered March 1 through July 31, 1966 to U.S. Government facilities as follows:

Yuma Proving Grounds, Yuma, Arizona, Contract No: DSA 134-7056 LOSA 13783-66

Williams Air Force Base, Arizona, Contract No: AP 02(600) 2525

Luke Air Force Base, Phoenix, Arizona, Contract No: BSA 134-6776

Naval Air Facility, Litchfield Park, Arizona, Contract No: DSA-134-66-37

	Product pounds	Cost of class-I milk, February, 1966, cost of class-II milk, January 1966	Total	Actual cost of class-I and class-II milk, March- July 1966	Total	Loss due to increased cost of class-I and class-II milk
March 1966:						
Class I:						
Skim-----	685,028	\$2,910	\$19,934.31	\$2,915	\$19,968.57	\$34.26
Butterfat-----	22,637	82,910	18,768.34	85,915	19,448.58	680.24
Class II:						
Skim-----	11,718	.980	114.84	.995	116.59	1.75
Butterfat-----	487	68.980	335.93	73.995	360.36	24.43
April 1966:						
Class I:						
Skim-----	736,730	2.910	21,438.84	2.910	21,438.84	
Butterfat-----	24,218	82,910	20,079.14	88,910	21,532.22	1,453.08
Class II:						
Skim-----	11,459	.980	112.30	1.100	126.05	13.75
Butterfat-----	476	68.980	328.34	73.100	347.96	19.62
May 1966:						
Class I:						
Skim-----	684,034	2.910	19,905.39	2.945	20,144.80	239.41
Butterfat-----	22,501	82,910	18,655.58	87.945	19,788.50	1,132.92
Class II:						
Skim-----	11,258	.980	110.33	1.155	130.03	19.70
Butterfat-----	468	68.980	322.83	74.155	347.05	24.22
June 1966:						
Class I:						
Skim-----	713,587	2.910	20,765.38	2.910	20,765.38	
Butterfat-----	23,438	82,910	19,432.46	88.910	20,838.73	1,406.27
Class II:						
Skim-----	11,273	.980	110.48	1.160	130.77	20.29
Butterfat-----	468	68.980	322.83	77.160	361.11	38.28
July 1966:						
Class I:						
Skim-----	634,841	2.910	18,473.87	3,1018	19,691.50	1,217.63
Butterfat-----	20,780	82,910	19,223.70	92,1018	19,138.75	1,910.05
Class II:						
Skim-----	10,002	.980	98.02	1.340	134.03	36.01
Butterfat-----	415	68.980	286.27	83.340	345.86	59.59
	Total-----		196,824.18		205,155.68	8,331.50

Shamrock Dairy, Inc., Tucson, Arizona

Product pounds delivered March 1 through July 31, 1966 to U.S. Government facilities as follows:

Davis-Monthan Air Force Base, Tucson, Arizona, Contract No: AF 02(601)-5186 U.S. Army Electronic Proving Ground, Fort Huachuca, Arizona, Contract No: DO-02-086-66-00047.

	Product pounds	Cost of class-I milk, February, 1966; cost of class-II milk, January 1966	Total	Actual cost of class-I and class-II milk, March- July 1966	Total	Loss due to increased cost of class-I and class-II milk
March 1966:						
Class I:						
Skim-----	973,083	\$2,910	\$28,316.72	\$2,915	\$28,365.37	\$48.65
Butterfat-----	31,883	82,910	26,434.20	85.915	27,392.28	958.08
Class II:						
Skim-----	11,703	.980	114.69	.995	116.44	1.75
Butterfat-----	426	68.980	293.85	73.995	315.22	21.37
April 1966:						
Class I:						
Skim-----	918,104	2.910	26,716.83	2.910	26,716.83	
Butterfat-----	29,844	82.910	24,743.66	88.910	26,534.30	1,790.64
Class II:						
Skim-----	11,572	.980	113.41	1.100	127.29	13.88
Butterfat-----	423	68.980	291.79	73.100	309.21	17.42
May 1966:						
Class I:						
Skim-----	906,509	2.910	26,379.41	2.945	26,696.69	317.28
Butterfat-----	30,147	82.910	24,994.88	87.945	26,512.78	1,517.90
Class II:						
Skim-----	11,612	.980	113.80	1.155	134.12	20.32
Butterfat-----	435	68.980	300.06	74.155	322.57	22.51
June 1966:						
Class I:						
Skim-----	974,316	2.910	28,352.60	2.910	28,352.60	
Butterfat-----	31,704	82.910	26,285.79	88.910	28,188.03	1,902.24
Class II:						
Skim-----	11,945	.980	117.06	1.160	138.56	21.50
Butterfat-----	452	68.980	311.79	77.160	348.76	36.97
July 1966:						
Class I:						
Skim-----	963,645	2.910	28,042.07	3.1018	29,890.34	1,848.27
Butterfat-----	31,236	82.910	25,897.77	92.1018	28,768.92	2,871.15
Class II:						
Skim-----	11,393	.980	111.65	1.340	152.67	41.02
Butterfat-----	429	68.980	295.92	83.340	357.53	61.61
	Total-----		268,227.95		279,740.61	11,512.56

NOTE.—The actual cost of class-I milk February 1966 was \$0.30 hundredweight higher f.o.b. our plant, Tucson, Ariz., than shown; also, the actual cost of class II March-July 1966 was \$0.30 hundredweight higher f.o.b. our Tucson plant. The net difference shown as loss due to increased cost of class I and class II is correct as shown since the \$0.30 hundredweight for class I was higher in each case.

Mr. PRICE. Mr. Gray, will you proceed?

STATEMENT OF JOHN GRAY, SINTON DAIRY CO., COLORADO SPRINGS, COLO.

Mr. GRAY. Mr. Chairman and members of the committee, I have a prepared statement which I would like to read to you, and also I want to support Congressman Evans' bill, H.R. 17500.

By virtue of having been the successful bidder on a contract with the U.S. Government, Sinton Dairy Co., through a subsequent action by that Government, stands to lose \$82,000. This does not include any built-in profit.

Mr. PRICE. This is an actual loss?

Mr. GRAY. This is an actual loss as of today and what we project throughout the remainder of this contract.

Sinton Dairy Co., of Colorado Springs, Colo., was, in November of 1965, awarded the contract to supply dairy products to the U.S. Air Force Academy, Ent Air Force Base, and Fort Carson, all located within a 17-mile radius of Colorado Springs.

Being the successful bidder on such a contract is presently costing the dairy approximately \$8,000 per month, or stated in other terms, at present the dairy loses approximately 7 cents on each and every gallon of milk delivered to any of these military installations. It appears losses will jump to \$11,000 per month within the next 30 days.

The duration of the contract is from January 25, 1966, until January 24, 1967. To September 1, 1966, Sinton has lost \$26,492. Based upon best projections available, Sinton will, by the termination date of the contract, have lost an additional \$55,000. Thus, the total losses for the year will amount to approximately \$82,000. The figures I am reading to you are conservative figures. For example, on distribution, the only cost involved is the least cost of trucks involved, actual wages of these men driving. There are no fringes included, no supervision, no overhead, and nothing like that in here, so these figures are very, very conservative.

Sinton's is an independent dairy, with an annual sales volume of approximately \$7 million. This contract amounts to \$1,505,000. Thus approximately 20 percent of their total sales is in a severe loss area for which there are, at present, no remedies available until February of 1967, the termination date. As of the end of this month, September, the entire dairy operation will be in an overall loss situation.

Perhaps it may be well to review the history of the contract and bidding procedures employed. In early October 1965 Sinton received an invitation to bid for the supply of dairy products to the Academy, to Ent, and to Fort Carson. Prior to submitting a bid, Sinton reviewed the price averages for the preceding 3 years, and arrived at a tentative price based upon the annual incremental rise of those years, or a spread of 8 cents per hundredweight. They then queried the manager of their co-op association in Colorado Springs, Mr. Dwight Hull, of the Intermountain Dairymen Association. Mr. Hull inquired of the national association of cooperatives and the Federal Market Administrator for the Colorado region. The consensus indicated that there would be no substantial fluctuation in price from either Agriculture's support price, the Minnesota-Wisconsin averages, or free market factors. The support price in October of 1965 was \$3.24 per hundredweight. Sinton's bid was based upon the October

simple average of \$5.35 per hundredweight, or a final bid figure, comprehending the spread, of \$5.44 per hundredweight. The contract was awarded on November 8, 1965. Performance began January 25, 1966. It should be noted that we were asked to bid on a contract form—one which did not, as is common in many Government contracts, provide for renegotiation, nor did it contain an escalation clause often found in these contracts.

In early 1966 the Secretary of Agriculture held a hearing and promulgated new milk support pricing orders of \$3.50 per hundredweight in April and \$4 per hundredweight in July. Thus, the total base class-1 price for August 1966 was \$6.15 per hundredweight. As of September 8, there was a further increase of 17 cents. Price predictions of dairy industry economists indicate further increases to a possible high in November of \$6.50 per hundredweight, or \$1.06 per hundredweight over the bid price.

In urging the subcommittee's support and favorable consideration of Congressman Evans' bill, we think it is significant and important to note that the interest of Federal Government is served by fostering a climate in which Sinton Dairy Co. can continue to bid, in the future, without the threat of occurrences such as that with which we are presently faced. This consideration to the Government amounts to approximately \$55,000 per year. This is the approximate figure by which any bid would have to be increased to cover transportation from Denver, the next nearest dairy. We were the successful bidder—and as it is now we were not so successful—and the next lowest bidder, as I recall it, was \$45,000 above us. Here we are taking this transportation factor into consideration. We are certain that there are similar situations existing all across this Nation, where the proximity of military installations to smaller dairies results in substantial savings to the Government, but smaller dairies cannot survive, and therefore will not bid upon, contracts where the possibility of a situation such as the present one exists.

Mr. Chairman and members of the committee, I think that it is imperative that private industry and Government be able to deal with each other with confidence. In today's world, each is a function of the other and serves the other. It is my feeling, as a businessman, that it is essential that industry be able to deal with the Government as they would with any other customer. We, as businessmen, accept, acknowledge, and in some instances even enjoy, the ordinary risks of the marketplace. Gentlemen, this situation is not an ordinary risk of the marketplace. This is the result of a unilateral act by one branch of the Government which seriously prejudices our relationship with another branch. I think it is implicit that, unless we can deal with confidence, industry will, in the future, have to build into every bid a factor to contemplate such circumstances, and this will, of course, cost the Government more money, as it costs us more money. This bill, as proposed by Mr. Evans, restores and fosters a healthy and mutually confident atmosphere to Government contracting.

Mr. Chairman and members of the committee, I sincerely appreciate the opportunity to appear before you. I have enjoyed testifying this morning and welcome any questions you may have.

If there are no questions, I would at this time ask leave to insert additional documentation and technical data into the record. Thank you.

Mr. PRICE. Thank you very much. Any material you submit will be accepted for the record.

(The following information was received for the record:)

Our problem began October 1965, in bid preparation for a military contract which was for a one year period, January 25, 1966 through January 24, 1967.

In bidding on a contract of this magnitude, we formulated our bid on a Class I price of \$5.44 which allowed for an increase of approximately eight cents per hundred weight, well within the past three year trend. These average hundred weight Class I prices are reflected in the attached Table I statistics. We were required to submit our bid before the end of October 1965 and were awarded the contract on November 8, 1965. In polling industry and governmental representatives, there was no indication of the sharp jump in Class I prices that was to follow. As Table I indicates, the average Class I price for the first five months of 1966 is calculated at \$5.68 which is an increase of 32 cents over the 1965 average. This is not the end, as the Class I price was set at \$6.077 for July 1966 and \$6.15 in August 1966. In fact the Department of Agriculture directed that the price be not less than \$6.10 from now until March 31, 1967. Incidentally there is also an additional four cents per hundred weight added to these Class I prices for the Market Administration expenses.

Our bidding is based on cost accounting by unit of product involved. Since the homo bulk gallon and one half gallon container are the large volume items, we list below the cost factors reflected in our bid last October for these products and how their cost have climbed as of July 1966:

	Bulk gallon ²	Half gallon
Our bid (based on \$5.44 standard cost): ¹		
Raw milk cost, 6-gallon unit	2.724	.227
Container	.398	.023
Production labor and burden	.275	.022
Vault	.032	.004
Distribution overhead	.215	.012
Administrative overhead	.021	.002
Profit or (loss)	(.194)	.035
Our bid	3.4710	.3250
Final award	3.4710	.3172
February 1966 cost (based on \$5.50 standard cost): ¹		
Raw milk cost	2.8068	.2339
Container	.6370	.0240
Production labor and burden	.2521	.0222
Vault	.0296	.0033
Distribution overhead	.2150	.0122
Administrative overhead	.0212	.0024
Total cost	3.6917	.2980
Bid price	3.4710	.3172
Profit or (loss)	(.2207)	.0192
May 1966 cost (based on \$5.80 standard cost): ¹		
Raw milk cost	2.9082	.2424
Container	.3500	.0240
Production labor and burden	.2405	.0224
Vault	.0344	.0038
Distribution overhead	.2208	.0112
Administrative overhead	.0177	.0020
Total cost	3.7716	.3058
Bid price	3.4710	.3172
Profit or (loss)	(.3006)	.0114
August 1966 cost (based on \$6.25 standard cost): ¹		
Raw milk cost	3.1362	.2614
Container	.3500	.0240
Production labor and burden	.2405	.0224
Vault	.0344	.0038
Distribution overhead	.2208	.0112
Administrative overhead	.0177	.0020
Total cost	4.3054	.3248
Bid price	3.4710	.3172
Profit or (loss)	(.8344)	(.0076)

¹ Standard cost is based on what the average class I is forecasted to be for the subsequent quarter or 6 month period.

² The costs shown are for a 6-gallon container, as this is the package size this product is distributed to the military.

Class I, II, and III prices, uniform price and butterfat differentials for eastern Colorado marketing area

Month and year	Minimum prices				Butterfat differential		
	Class I	Class II	Class III	Uniform ¹	Class I	Class II and class III	Producer
1963:					<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
January-----	\$5.21	\$3.30	-----	\$4.75	7.5	7.0	7.4
February-----	5.20	3.05	-----	4.72	7.5	7.0	7.3
March-----	5.20	3.01	-----	4.71	7.5	7.0	7.4
April-----	5.19	3.00	-----	4.65	7.5	7.0	7.4
May-----	5.18	3.00	-----	4.57	7.5	7.0	7.3
June-----	5.17	3.01	-----	4.48	7.5	7.0	7.3
July-----	5.18	3.01	-----	4.59	7.5	7.0	7.4
August-----	5.19	3.01	-----	4.71	7.5	7.0	7.4
September-----	5.20	3.09	-----	4.88	7.5	7.2	7.4
October-----	5.22	3.11	-----	4.89	7.8	7.0	7.5
November-----	5.25	3.13	-----	4.91	7.6	7.0	7.5
December-----	5.26	3.13	-----	4.87	7.6	7.0	7.4
Simple average-----	5.204	3.048	-----	4.67	7.5	7.0	7.4
1964:							
January-----	5.26	3.13	-----	4.86	7.5	7.0	7.3
February-----	5.29	3.13	-----	4.84	7.5	7.0	7.4
March-----	5.28	3.03	-----	4.73	7.5	7.0	7.3
April-----	5.27	3.02	-----	4.70	7.5	7.0	7.3
May-----	5.22	3.02	-----	4.56	7.5	7.0	7.3
June-----	5.22	3.03	-----	4.51	7.5	7.0	7.3
July-----	5.21	3.27	\$3.12	4.60	7.5	7.0	7.3
August-----	5.22	3.30	3.15	4.66	7.5	7.4	7.4
September-----	5.25	3.39	3.24	4.73	7.7	7.4	7.6
October-----	5.34	3.42	3.27	5.00	8.0	7.3	7.8
November-----	5.37	3.44	3.29	4.90	7.9	7.5	7.8
December-----	5.39	3.44	3.29	4.88	8.1	7.1	7.8
Simple average-----	5.277	3.218	3.227	4.75	7.6	7.1	7.5
1965:							
January-----	5.39	3.40	3.25	4.87	7.7	7.0	7.5
February-----	5.35	3.37	3.22	4.85	7.5	7.0	7.3
March-----	5.32	3.37	3.22	4.82	7.5	7.0	7.3
April-----	5.30	3.38	3.23	4.77	7.5	7.1	7.4
May-----	5.33	3.37	3.22	4.70	7.7	7.1	7.5
June-----	5.32	3.35	3.20	4.70	7.7	7.1	7.5
July-----	5.28	3.36	3.21	4.74	7.7	7.1	7.5
August-----	5.31	3.40	3.25	4.82	7.7	7.3	7.6
September-----	5.35	3.44	3.29	4.95	7.9	7.5	7.8
October-----	5.39	3.49	3.34	5.00	8.1	7.5	7.9
November-----	5.44	3.54	3.39	5.11	8.2	7.6	8.0
December-----	5.49	3.62	3.47	5.12	8.2	7.2	8.0
Simple average-----	5.356	3.424	3.274	4.87	7.8	7.2	7.6
1966:							
January-----	5.57	5.62	3.47	5.08	8.2	7.1	7.9
February-----	5.57	3.73	3.58	5.16	7.7	7.4	7.6
March-----	5.88	3.83	3.88	5.23	8.0	7.6	7.9
April-----	5.78	3.79	3.84	5.21	8.7	7.8	8.0
May-----	5.78	-----	-----	-----	8.7	-----	-----

¹ Weighted average of uniform price for eastern Colorado and Colorado Springs from January 1963 through November 1965.

U.S. DEPARTMENT OF AGRICULTURE,
CONSUMER AND MARKETING SERVICE,
EASTERN COLORADO MARKETING AREA,
Denver, Colo.

Official announcement of minimum class prices

[Prices per hundredweight milk of 3.5 percent butterfat content]

Class I milk, June 1966 (higher of A or B) (subject to location adjustments when applicable)	\$5.78
A. Wisconsin-Minnesota price (basic formula)	3.65
Class I differential	2.10
 Total	 5.75
B. Class I price for April 1966	5.78
Class II milk, May 1966, basic formula plus \$0.15	3.80
Class III milk, May 1966, basic formula	3.65

BUTTERFAT DIFFERENTIALS

(Per one-tenth of 1 percent butterfat)

Class I, June 1966 ($0.6354 \times 1.3 \div 10$)	.083
Class II and III, May 1966 ($0.635 \times 1.2 \div 10$)	.076

MARKET PRICE QUOTATIONS—MAY 1966

(For information only)

Wisconsin primary markets, Cheddar cheese, per pound	\$.4288
Chicago 92-score butter, per pound	.6354
Chicago area spray powder (month ended 25th day), per pound	.1670
Prices paid farmers by Midwest condenseries (3.5 percent butterfat basis), per hundredweight	3.633
Wisconsin-Minnesota manufacturer grade milk price (3.5 percent), per hundredweight	3.65

Minimum price to be paid producers on or before June 30 for milk delivered June 1-15, \$3.65 per hundredweight. (Pay cooperatives on or before June 28.)

May 1966 class price summary

	Class I	Class II	Class III
Differential value 3.5 pounds butterfat	\$2.87	\$2.66	\$2.66
Value of 100 pounds skim milk	2.91	1.14	.99
Total class price at 3.5 percent	5.78	3.80	3.65
Butterfat differential	.082	.076	.076

Released June 6, 1966.

H. ALAN LUKE,
Market Administrator.

U.S. DEPARTMENT OF AGRICULTURE,
CONSUMER AND MARKETING SERVICE,
EASTERN COLORADO MARKETING AREA,
Denver, Colo.

Official announcement of minimum class prices

[Prices per hundredweight milk of 3.5 percent butterfat content]

Class I milk prices, July 1966:

July 1-4: Minnesota-Wisconsin price (basic formula)	\$3.82
Class I differential	2.10
Supply-demand adjustment (see reverse side)	.00

Total	5.92
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July 5-31: Minimum basic formula as per amendment effective

July 5	4.00
Class I differential	2.10

Total	6.10
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Weighted average to be used if one report is submitted for July

Class II milk, June 1966 (basic formula, plus \$0.15)	3.97
Class III milk, June 1966, basic formula	3.82

BUTTERFAT DIFFERENTIALS (PER ONE-TENTH OF 1 PERCENT BUTTERFAT)

Class I, July 1966 ($0.6599 \times 1.3 \div 10$)	0.086
Classes II and III, May 1966 ($0.6599 \times 1.2 \div 10$)	.079

MARKET PRICE QUOTATIONS, JUNE 1966 (FOR INFORMATION ONLY)

Wisconsin primary markets, Cheddar cheese (per pound)	.4436
Chicago 92 score butter (per pound)	.6599
Chicago area spray powder (month ended 25th day) (per pound)	.1681
Prices paid farmers by Midwest condenseries (3.5 percent butterfat basis)	(¹)
Wisconsin-Minnesota manufacturing grade milk price (3.5%) (per hundredweight)	3.82

¹ Not available.

Minimum price to be paid producers on or before July 31 for milk delivered July 1-15, \$3.82 per hundredweight. (Pay cooperatives on or before July 29.)

June 1966 class price summary

	Class I	Class II	Class III
Differential value 3.5 pounds butterfat	\$2,905	\$2,765	\$2,765
Value of 100 pounds skim milk	2.875	1.205	1.055
Total class price at 3.5 percent	5.78	3.97	3.82
Butterfat differential	.083	.079	.079

Released July 5, 1966.

D. ALAN LUKE,
Market Administrator.

U.S. DEPARTMENT OF AGRICULTURE,
CONSUMER AND MARKETING SERVICE,
EASTERN COLORADO MARKETING AREA,
Denver, Colo..

Official announcement of minimum class prices

[Prices per hundredweight milk of 3.5 percent butterfat content]

Class I Milk, August 1966 (subject to location adjustments when applicable):

Wisconsin-Minnesota price (basic formula)	-----	\$4.05
Class I differential	-----	2.10

Total	-----	6.15
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Class II Milk, July 1966 (basic formula plus \$0.15)	-----	4.20
Class III Milk, July 1966 (basic formula)	-----	4.05

BUTTERFAT DIFFERENTIALS

(Per one-tenth of 1 percent butterfat)

Class I, August 1966 ($0.7119 \times 1.3 \div 10$)	-----	.093
Class II and III, July 1966 ($0.7119 \times 1.2 \div 10$)	-----	.085

MARKET PRICE QUOTATIONS, JULY 1966

(For information only)

Wisconsin primary markets, Cheddar cheese, per pound	-----	.4691
Chicago 92 score butter, per pound	-----	.7119
Chicago area spray powder (month ended 25th day), per pound	-----	.1883
Price paid farmers by Midwest condenseries (3.5 percent butterfat basis), per hundredweight	-----	(¹)
Wisconsin-Minnesota Manufactured grade milk price (3.5 percent), per hundredweight	-----	4.05

¹ Not available.

Minimum price to be paid producers on or before August 31 for milk delivered August 1-15—\$4.05 per hundredweight. (Pay cooperatives on or before August 29.)

July 1966 class price summary

	Class I			Class II	Class III
	July 1-4	July 5-31	Weighted average		
Differential value 3.5 pounds butterfat	3.01	3.01	3.010	2.975	2.975
Value of 100 pounds skim milk	2.91	3.09	3.067	1.225	1.075
Total class price at 3.5 percent	5.92	6.10	6.077	4.20	4.05
Butterfat differential			.086	.085	.085

Released August 5, 1966.

H. ALAN LUKE, *Market Administrator.*

Bids

	October 1965 Bid \$5.44 ¹	February 1966 \$5.50 ¹	May 1966 \$5.80 ¹	August 1966 \$6.25 ¹	Septem- ber at \$6.40	At \$6.50
Bulk gallon:²						
Raw milk cost.....	\$2.724	\$2.8068	\$2.9082	\$3.1362	\$3.2280	\$3.2796
Container.....	.398	.3670	.3500	.3500	.3500	.3500
Prod., labor and burden.....	.275	.2521	.2405	.2405	.2405	.2405
Vault.....	.032	.0296	.0344	.0344	.0344	.0344
Distribution overhead.....	.215	.2150	.2208	.2208	.2208	.2208
Administration overhead.....	.021	.0212	.0177	.0177	.0177	.0177
Profit or (loss).....	(.194)					
Total costs.....	3.665	3.6917	3.7716	3.9996	4.0914	4.1430
Bid award price.....	3.4710	3.4710	3.4710	3.4710	3.4710	3.4710
Current profit or (loss).....	(.194)	(.2207)	(.3006)	(.5286)	(.6204)	(.6720)
Half gallon:						
Raw milk cost.....	.227	.2339	.2424	.2614	.2690	.2733
Container.....	.023	.0240	.0240	.0240	.0240	.0240
Prod., labor and burden.....	.022	.0222	.0224	.0224	.0224	.0224
Vault.....	.004	.0033	.0038	.0038	.0038	.0038
Distribution overhead.....	.012	.0122	.0112	.0112	.0112	.0112
Administration overhead.....	.002	.0024	.0020	.0020	.0020	.0020
Profit or (loss).....	.035					
Total costs.....	.3250	.2980	.3058	.3248	.3324	.3367
Bid award price.....	.3172	.3172	.3172	.3172	.3172	.3172
Current profit or (loss).....	.0272	.0192	.0114	(.0076)	(.0152)	(.0195)
Month's class I price ³	5.42	5.61	5.82	6.19	6.36	-----

¹ Standard cost-basis of our unit cost accounting of Class I milk for a quarter or monthly period.

² These costs are for a 6-gal. container, which is the military package size.

³ The monthly Department of Agriculture Class I price including a 4¢ market administration cost.

Mr. PRICE. Questions?

Mr. STAFFORD. I am delighted to listen to the testimony and learn that the price of fluid milk and the blend price apparently in other parts of the country now are high enough so that at least the Midwest will stop trying to penetrate the eastern milk market.

Mr. PRICE. I was interested in one comment you made, Mr. Gray, and I certainly agree with it. A situation such as this certainly can drive the small dairies out of business, particularly in dealing with the Federal Government.

Mr. GRAY. If we were to become gun shy, and I think we are at this time, it will cost the Government \$45,000 more.

Mr. HÉBERT. Speaking specifically to that point, I think it is important to note that this contract also was a small business setaside. I would like to reemphasize the point made by Mr. Gray, again speaking to this particular point—this contract alone places the overall dairy operation of Sinton Dairy in a loss situation as of the end of this month. This is not just losing money on the contract but this figure when plugged into the overall situation shows a loss.

Mr. HICKS. Is this a nationwide situation, Mr. Gray, or is it confined to the Midwest out as far as Colorado?

Mr. GRAY. I would say any time you have a combination of military installations and a Federal market order you have this problem.

Mr. HICKS. The reason I am curious is that in my area I have two Air Force bases, both of which have been expanded, and we are in a Federal milk marketing area. Yet this is the first I have heard of this matter. I wondered why I have not heard a scream or two.

I am from the State of Washington.

Mr. GRAY. I am sure the same facts would apply there.

Mr. PRICE. Mr. Gray, of course, we are all members of the Armed Services Committee. We have a matter here which, if it were not for the fact it is too vital to the armed services, normally would be before the Committee on Agriculture.

Some of us, particularly those who do not live in a rural area, may be a little mystified by the difference of the support price order and the marketing order price.

It is a little puzzling to me. You mentioned \$3.50 per hundred-weight and \$4 per hundredweight in July and then you jumped to the total base price of August 1966, of \$6.15 per hundredweight.

I understand some of this, but would you go through this process for us for the edification of the committee?

Mr. GRAY. Yes. The price is built this way: We have a basic formula. The basic formula we operate under is the Minnesota-Wisconsin manufacturing average.

Then our class-1 price is the price we pay for the milk product—

Mr. STAFFORD. Can you tell us what the criteria are which go into that basic formula? That might be helpful to the chairman.

Mr. GRAY. The basic formula is an average figure composed of the prices that the manufacturing plants in Minnesota and Wisconsin pay for manufactured milk to go into powder, butter, cheese, and so on. This is the average price which we call the basic formula.

Then in our particular market order our class-1 price is plus \$2.10 per hundredweight over the basic formula. Therefore, if we were at support level, say \$4, our price would be \$6.10, adding on the \$2.10.

At present, however, the Minnesota-Wisconsin manufacturing averages are over the support price. They have moved beyond the support price, so it keeps pushing our price up to where we are now at \$6.32 and we are anticipating \$6.50 for the month of October.

Mr. STAFFORD. And the base price is simply a floor? Is that right?

Mr. GRAY. Yes; a floor.

Mr. PRICE. Further questions?

Mr. HALL. I wonder if Mr. Gray would comment on whether or not he would accept in the Evans bill the additional amendment covering point 4 of Mr. Stalbaum's and Mr. Rittmueller's testimony?

Mr. GRAY. Milk products?

Mr. HÉBERT. We definitely would want that in that. This contract also covers ice cream and other things initially mentioned.

I think we definitely would recommend that that be inserted. It would be most helpful.

Mr. HALL. That is all, Mr. Chairman.

Mr. PRICE. Thank you very much, gentlemen. You have made good witnesses.

Mr. PRICE. Now the committee will go to industry representation.

First, our colleague on the full committee, Congressman Walker, of New Mexico, was here early in the morning, but because of other business he could not wait to testify personally.

However, he has requested the committee to accept a joint statement of his and that of his colleague from New Mexico, the Honorable Tom Morris.

Without objection, the statement will be accepted for the record.

(The joint statement above referred to is as follows:)

JOINT STATEMENT OF MR. MORRIS AND MR. WALKER OF NEW MEXICO

Mr. Chairman, we appreciate you and the distinguished Members of this subcommittee allowing us to appear before you this morning.

H.R. 17500, which is being considered this morning is most important to several of our constituents. We think these constituents have been made victims of circumstances which were totally beyond their control, and which they had no reason to anticipate. We think their cases, as well as similar cases throughout the United States, make it imperative that some action be taken to grant them relief before Congress adjourns.

If the Committee will be so kind as to bear with us, we think the problem facing our constituents can best be explained by tracing the series of events which have made this legislation necessary.

Clardy-Campbell Dairy Products is an independent dairy which has its general offices in Roswell, New Mexico, with branch offices in the southeastern section of our State. This dairy—as do many others—submits bids to supply various military installations in order to stabilize its volume and to help move seasonable surpluses. By the very nature of these contracts, they are quite competitive and bid on a very small margin.

On January 20, 1966, Clardy-Campbell's representatives attended the Federal Market Order Hearing in Albuquerque. There was nothing mentioned at this hearing about a possible change in the dairy products support prices. But, aware of the then existing conditions in the dairy industry, and on the basis of unconfirmed reports, Clardy-Campbell anticipated a moderate increase of some 25¢ per hundred weight of 3.5% butterfat test milk in the support prices and accordingly based its bid to supply Cannon Air Force Base with fluid milk for one year. Clardy-Campbell was awarded the contract at the bid openings on February 28, 1966.

On March 10, at an emergency hearing on the Federal Milk Marketing Order held in Denver, it was recommended that the support price be raised to 22¢ per hundred weight. Thus, it is very easily seen that Clardy-Campbell was a fairly accurate predictor on the conditions as they then existed in the milk industry. However, Mr. Chairman, when the Department of Agriculture announced the new support price, it wasn't for 22¢ per hundred, but it was 39¢ per hundred. This announcement occurred around March 24.

In percentage terms, the price of milk has increased another 12.6% since the announced March increase. This amounts to an increase of 6.1¢ per gallon—which is the most marketable item of a dairy the size of Clardy-Campbell. In other words, the price has risen from \$5.63 per hundred weight of 3.5% butterfat test milk to \$6.34 per hundred weight between the March increase and the present time.

Another aspect of these contracts besides their low margin, Mr. Chairman, is their inflexibility. Hence, Clardy-Campbell has not had the opportunity to novate or otherwise modify its contract. This one contract has put them in a position where their whole operation is suffering, and it could possibly result in their being forced out of business. The pencil loss on the milk products delivered to Cannon Air Force Base last month was \$902.42. When one includes the transportation and handling costs, the loss was \$1,189.28.

Mr. Chairman, we do not think it is the purpose of the Department of Agriculture to place dairies with similar contracts in such a perilous position. Nor do we think that it is the intent of the Department of Defense to consciously hold them to their contract and possibly force them out of business. But, at the present time, everybody's hands are tied. This legislation is necessary to grant relief to those milk contractors, and to insure that we do not have similar occurrences in the future. We feel that there is a need for the same flexibility in such governmental contracts as now marks the majority of private contracts.

As Congressman Walker has introduced an identical bill to the one being considered this morning, we are happy to join in commending the Chairman for holding this hearing and respectfully urging the swift approval of this measure.

Mr. PRICE. The next witness will be Mr. Linwood Tipton, representing the Milk Industry Foundation.

Mr. Tipton?

STATEMENT OF E. LINWOOD TIPTON, MILK INDUSTRY
FOUNDATION, WASHINGTON, D.C.

Mr. Tipton. Thank you, Mr. Chairman.

Mr. Chairman, my name is E. Linwood Tipton. I am employed by the Milk Industry Foundation, 910 17th Street Northwest, Washington, D.C. Among my responsibilities are all our activities relating to the Federal milk marketing order program.

The Milk Industry Foundation represents fluid milk processors and distributors located throughout the United States, Canada, and 22 other countries. Our membership ranges from very small dairies to the largest.

We strongly support the enactment of H.R. 17500.

Unless Congress acts, many of our members will incur irreparable damages as a result of the recent and drastic increases in milk prices caused by actions of the Secretary of Agriculture. The problem has occurred because contracts with the Department of Defense for supplying milk do not provide escalation clauses or renegotiation rights. Thus, milk processors have entered into contracts with one arm of the Federal Government without adequate provision for taking into account precipitate action of another arm substantially increasing processors' costs. They have been caught in a giant vise—one jaw of the vise being the U.S. Department of Defense and the other the Department of Agriculture. The vise has now been closed with milk processors squeezed in the center.

The problem started on March 1, 1966, when the Secretary of Agriculture announced late in the afternoon that he was taking action to suspend certain Federal milk marketing order provisions. His action increased the price of milk in 45 Federal orders by amounts ranging from 20 to 45 cents per hundredweight or about one-half to 1 cent per quart. The action was made effective on March 2 at 0001 o'clock. Thus the time lapse between the announcement and the effective date was approximately 8 hours, with about 7 of the 8 hours being after-duty hours.

In conjunction with announcing the suspension action, the Secretary also scheduled hearings 1 week later to receive evidence with respect to the economic and emergency marketing conditions which related to the appropriate levels of class-1 prices in all Federal milk marketing orders.

The processing side of the dairy industry was not advised of such probable action nor consulted with prior to either the suspension order or the call of the hearings. It had no opportunity to demonstrate to the Secretary the consequences of such actions on regulated handlers.

At the public hearing, processors asked the Secretary of Agriculture to exempt from the price increase milk used to service Government contracts. However, the Secretary denied that request. It was the processors' contention then and still is that the action by the Secretary could not be anticipated. The speed with which the action was taken and the lack of publicity that the action was even being considered placed handlers in a situation in which they could not possibly have anticipated the increase.

In bidding on Government contracts, milk processors estimate the price which they will be required to pay for milk as well as all other

cost to be incurred in fulfilling the contract. It is a fact sworn to by milk processors who testified before the Department of Agriculture price hearings that most of the handlers took several precautionary actions prior to submitting their bids.

The testimony was that they checked with the producers' organizations from which they buy milk to determine whether they anticipated any changes in producer prices and also with the Federal milk market administrators to determine whether the administrators who are responsible for administration of Federal milk orders anticipated any action on the part of the Department which would cause the price to increase.

Typical of the situation handlers found themselves in is the case of East Greenwich Dairy Co., East Greenwich, R.I., on which the Comptroller General has ruled that there can be no relief short of legislative action by this Congress.

The company submitted bids on February 28, 1966, and March 1, 1966, for two contracts. The contracts were for the period of April 1, through September 30, 1966.

The bids were based on price estimates developed by a group of university economists. At the time the bids were submitted the market administrator was estimating the April price at \$5.74 per hundred-weight. However, following the Secretary's action to increase prices, the actual April price was \$6.18, or 44 cents higher.

In addition to ascertaining the market administrator's estimate, the bidding company also prudently checked with the producers' cooperative from which it purchases its supplies. The cooperative responded to the effect that it did not anticipate any action which would alter the university economists' previous estimates.

This happens to be one of the largest, if not the largest, dairy farmer cooperatives in the United States.

The bids were opened at about 2:30 p.m. on March 1, and East Greenwich was the low bidder. At approximately 8 p.m. on March 1, the Federal milk market administrator received a telegram announcing that the higher price would be effective at midnight. There was no way of anticipating that the Secretary would increase prices.

The company now estimates a loss of approximately \$20,000 on this contract; and for a small company, this is extremely important.

On March 2, 1966, the bidder requested that new bids be invited or that price relief be given by escalating the bid price by the amount of increase ordered by the Secretary of Agriculture. This request was denied in Comptroller General Decision B-158683 dated April 28, 1966.

About 50 percent of East Greenwich's business is with military installations. In addition, it has other fixed-price contracts with Veterans' Administration hospitals.

This situation is typical of practically all milk processors servicing military contracts.

Bush Dairy, a handler under the Mississippi order, on February 14 and 18, 1966, submitted bids on two contracts for Keesler Air Force Base, Biloxi, Miss. On both occasions, the general manager of Bush telephoned the market administrator and the dairy producers' cooperative from which the dairy purchases milk, on the same day the bids were submitted, to determine any possible changes in the fluid milk

price to farmers. In each instance he was informed that they knew of no contemplated changes.

Bush was awarded the two contracts totaling about 8 million pounds. These represent about 50 percent of Bush's total fluid milk sales. Bush Dairy attempts to estimate a profit margin of about one-third of a cent per quart. This is equivalent to about 16 cents per hundred-weight and ranges on the high side of the margin situation with respect to military milk contracts throughout the United States.

Many military contracts are bid at no profit. In such situations, the contracts are sought for the additional volume which has a salutary effect toward reducing unit costs.

Another processor in the Southwest, relying on the Federal Market Administrator's estimates, bid on a contract only to find that the actual milk prices exceed those used in the estimate by more than 1½ cents per quart.

Still another processor in the Midwest bid during July 1965, on a contract to be effective for 1 year commencing October 24, 1965.

Now, 15 months later, as the contract nears its expiration date, the bidding company is estimating losses resulting from the Secretary of Agriculture's price increases amounting to about \$2,000 per month. Sales under the contract amount to about \$24,000 per month. Another bidder has the contract for the forthcoming year at substantially higher prices.

These situations are typical of the experience of most handlers with fixed-price contracts being performed on or after March 1, 1966.

Following the USDA hearings held in early March, a new decision was issued and made effective on April 10, 1966. This rescinded the action taken on March 2, 1966. The April 10 decision provided for price increases of 20 or 22 cents for most orders. These price increases were to continue in effect through June and in a few instances, July 1966. However, at the end of this period, the order pricing provisions were to revert to those in effect on March 1.

But they did not; instead, about the 1st of June, Secretary Freeman announced that again nationwide emergency hearings would be held during the second week of June to consider fluid milk price increases in all Federal milk orders. The decision resulting from these hearings was announced on June 29, 1966, and made effective July 5, 1966. It provided for an immediate further increase of about 15 to 20 cents in the class-1 prices of all Federal orders and set that as the minimum base price to prevail throughout the period of July 1966, through March 1967. Therefore, in estimating prices for the purpose of submitting bids, milk processors were again caught in the jaws of the vise.

It should be pointed out at this time that accompanying the April 10 fluid milk price increase in all Federal milk orders was a 26-cent-per-hundredweight increase in support prices. Also accompanying the July amendments was a further 50-cent increase in the support price for manufacturing milk, raising it from the \$3.50 level set in April to \$4 per hundredweight. Thus, from April 1 to July 1 the Secretary of Agriculture increased support prices by 76 cents per hundredweight.

These increases permeated throughout the entire United States resulting in similar price increases for all fluid milk.

Fluid milk prices paid to dairy farmers are now averaging about \$1 per hundredweight higher than they were at this time last year. This is equivalent to over 8 cents per gallon, and is considerably in excess of the probable or "hoped for" profit margin in military contracts.

As a result, milk processors are losing substantial sums of money to service military contracts. Relief is needed badly and quickly. They could not anticipate the Secretary of Agriculture's actions and could not protect themselves from their economic consequences. Escalation clauses are needed in future contracts to avert recurrence of this situation.

We urge the adoption of H.R. 17500 with some modifications. The specific modifications are to strike from page 2, line 5, the word "fluid" and the phrase "for beverage purposes." The same words should also be stricken from lines 14 and 15 of page 2.

The bill as now drafted seems to limit price adjustments with respect to military milk contracts to those instances when the Secretary of Agriculture specifically orders that producer fluid milk prices be changed. However, fluid milk prices are highly related to, and in the case of Federal milk orders are directly dependent on, the level of manufacturing milk prices which the Secretary of Agriculture has the authority to fix under the price support program.

Even in markets not subject to Federal milk marketing orders, it is still necessary that a proper relationship be maintained between prices paid dairy farmers for manufacturing milk and for fluid milk. Therefore, fluid milk prices are substantially increased indirectly as the Secretary of Agriculture orders an increase in manufacturing milk prices through the price support program. In fact, that is what happened on two occasions this summer.

The proposed changes would clearly authorize equitable price adjustments in military milk contracts when the Secretary of Agriculture alters the support price for manufacturing milk products with its inevitable effect on fluid milk prices as well as in those instances when he directly orders a change in fluid milk price levels.

This legislation deals with contracts of establishments within the Department of Defense, but this is only a part of the problem. There are other Government agencies which also buy milk under fixed-price contracts.

For example, there are 169 Veterans' Administration hospitals which buy significant quantities of fluid milk under fixed-price contracts as well as 8 U.S. Public Health Service hospitals and numerous Indian health hospitals and feeding centers.

The industry needs relief in connection with contracts entered into with these other Federal agencies.

If your distinguished committee has jurisdiction over legislation which could result in relief similar to that afforded by H.R. 17500 in connection with contracts with other Government departments, we ask your good offices in amending the bill to accomplish this purpose.

We would not, however, wish to see this legislation fail of enactment during this Congress by complicating it with problems arising out of contracts with Federal agencies other than those involved in the Department of Defense.

Mr. PRICE. Thank you very much, Mr. Tipton.

That last paragraph would be beyond the jurisdiction of this committee, to deal with other Government agencies, other than the Department of Defense.

I would like to ask you with regard to the first paragraph on page 6, where you urged modifications by striking the word "fluid" and the phrase "for beverage purposes," whether or not this can be accomplished by the suggested Stalbaum amendment?

Mr. TIPTON. I have not had a chance to look at the Stalbaum amendment specifically.

What we intend to accomplish is essentially the same thing.

Mr. PRICE. Questions?

Mr. STAFFORD. While Mr. Tipton is still here, and hopefully the representative for the Government may also be in the room, I think it would be very helpful to this committee, notwithstanding the explanation we got earlier which also was helpful, if we had from either Mr. Tipton or the Government a one- or two-page explanation of the formula used and the criteria used in developing the various prices in a milk marketing order area so that we will have it before us.

Mr. PRICE. The committee will obtain that from the Department of Agriculture.

Mr. Sullivan will testify tomorrow morning.

Mr. STAFFORD. If we can have that at the time of his testimony it would be very helpful to this committee.

Mr. PRICE. Very well.

Thank you very much, Mr. Tipton.

The next witness will be Mr. M. R. Garstang, General Counsel, National Milk Producers Federation.

Mr. Garstang?

Mr. GARSTANG. Mr. Chairman, if my statement can be inserted in the record, I will merely summarize a couple of points in it.

Mr. PRICE. Either way you desire. It is a very brief statement.

(The prepared statement of Mr. Garstang is as follows:)

The National Milk Producers Federation is a national farm organization. It represents dairy farmers and the dairy cooperative associations which they own and operate. Through these associations, farmers act together to process and market for themselves, on a cost basis, the milk and butterfat produced on their farms.

The Federation was organized in 1916 and is celebrating its 50th anniversary this year.

Practically every form of dairy product made in the United States in any substantial volume is processed and marketed by dairy farmers in their own dairy cooperative plants.

Dairy cooperatives acting as bargaining agents for their farmer members supply the major portion of raw milk used by the dairy processing plants in the United States.

Many dairy cooperatives represented through the Federation supply substantial quantities of milk and dairy products to establishments operated by the Department of Defense. They also supply raw milk to dairy processing plants bidding on contracts to supply such establishments.

These contracts run for periods usually ranging from three months to a year and call for fixed prices for the full term of the contract.

The price of raw milk to the farmers is a primary cost factor in practically all of the items supplied under the contracts.

Bidding under the contracts is very close, and the bidders assume the risk of market price fluctuations and also the risk of changes in labor costs.

In addition, under the present system, there is a possibility, generally unpredictable, of changes in the cost of raw milk brought about by government action.

During the current year, a very sharp downturn in the total production of milk in the United States made it necessary for the government to take emergency action to increase by substantial amounts the price of milk to dairy farmers.

Whether this action will be sufficient to avert a threatened shortage still remains to be seen. It may be necessary to take additional action to stem the sales of dairy herds that are still taking place.

The price increases ordered this year have caused severe hardships to bidders on government contracts. This has served to bring home to all of us the need for price adjustments in government contracts to relieve hardship caused by price increases ordered by the government itself.

The bidders have no control over these prices, and the amount of the increases ordered this year could not reasonably have been anticipated in the bidding.

The price of milk to dairy farmers is supported at not less than 75 nor more than 90 percent of parity under the Agricultural Act of 1949 (7 U.S.C. Sec. 1446). The support price at the farm is obtained by government purchases of butter, nonfat dry milk solids, and cheese at price levels designed to return to farmers the desired support level for milk used for dairy products. Fluid milk prices ordinarily are higher. While they are not supported directly under the 1949 Act, they are supported in fact because the fluid milk prices tend to adjust to the basic support price.

On April 1, 1966, the Secretary of Agriculture increased the support level for milk to farmers from \$3.24 to \$3.50 per hundredweight.

This failed to stop the downward trend in production, and on July 1, 1966, the support level was further increased by action of the Secretary from \$3.50 to \$4.00 per hundredweight.

Prices for milk at the farm level are also controlled in Federal milk marketing orders under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. Sec. 608c(5)). Under this Act, minimum prices to farmers are prescribed for milk in the designated marketing areas. A classified pricing system is used, with a higher price set for milk used for beverage purposes and a lower price set for milk used to make manufactured dairy products such as butter and cheese.

Prices in the Federal order markets are set by the Secretary of Agriculture after public hearings at which interested parties may appear and present statements. Here again, once the order prices are announced, the bidder has no control over them.

During the current year, the Secretary of Agriculture made sweeping decisions on three occasions to increase milk prices, or prevent scheduled decreases, throughout the system of Federal milk marketing orders. These changes affected substantially the farm price for milk, particularly that used for beverage purpose and including milk supplied under government contracts.

In addition to these increases in the order prices, the support price increases made April 1 and July 1 were reflected in the Federal order markets through the operation of pricing formulas based in varying degree on the price for manufacturing milk.

There is another area in which the cost of raw milk may be changed because of Government action. Where an increase in price support levels announced by the Secretary of Agriculture has caused an increase in class prices, including class prices administered by a state agency, for milk under contract to Federal installations, then a price adjustment should be made. Such an adjustment should be made, however, only where it can be demonstrated that the increase in price is passed through the handler to the producer supplying the milk.

In any of these cases, the only contract adjustment which would be made would be one justified by the fact that the increased cost of milk at the farm level was the result of governmental action, either state or Federal, prompted by considerations of general welfare and made in the public interest. And in the case of Federal price increases, the government would simply be adjusting its supply contracts to reflect milk cost increases which it had itself ordered.

The proposed legislation over the long run may well result in a net benefit to the government, because bidding can be closer if the risk of price change by government action is relieved by an appropriate escalation clause.

We believe the request for such a clause, plus relief for bidders caught by the government price increases made this year, is reasonable and fair, and we urge you to report legislation to accomplish these objectives.

STATEMENT OF M. R. GARSTANG, NATIONAL MILK PRODUCERS FEDERATION

Mr. GARSTANG. First I would like to express my appreciation for the comments which have been made by the Members of Congress who testified here, and also for the interest shown by the committee in this problem.

I am speaking for the National Milk Producers Federation, which is a farm organization representing dairy farmers and the dairy cooperative plants which they have built and which they operate themselves. Through these plants they process and market, on a cost basis, the milk and butterfat they produce on their farms. We are interested in this legislation from the farmer angle of it since we are the ones who got the price increases which brought about this situation. We are also interested in it because some of the plants owned and operated by dairy farmers have bid on Government contracts and have suffered some of the same losses that have been described to you by the other witnesses.

It already has been disclosed that these contracts run for fixed terms, usually 3 months to a year, and that the price is fixed during the whole time, so there is a substantial risk involved in this bidding.

Under the proposed legislation, that risk would continue with respect to all normal business changes in price. But it would provide relief against changes in price which the Government itself has brought about by Government order.

The price of raw milk is the primary cost in supplying the contracts.

I would like to comment on why these price changes were made this year and why they were so substantial, and why there is a real justification for making some adjustments in the contract prices.

During the current year a very sharp downturn in the total production of milk in the United States made it necessary for the Government to take emergency action to increase by substantial amounts the price of milk to dairy farmers.

The purpose of the support program, and of the marketing agreement program, is to provide minimum prices for milk to the end that adequate supplies of milk will continue to be available for use in this country.

Beginning back in 1955, about April, milk production began to show an inclination to decline from the previous year, rather slowly at first, by amounts ranging from 1 to 2 to 3 percent; but by the first of this year the decline became alarming.

For example, in 1956—the percentage of decrease from 1955—January, down 5.3 percent; February, down 5.8 percent; March, down 4.6 percent; April down 3.8 percent; May down 4.1 percent; June down 2.9 percent; July down 3.2 percent; August down 2.5 percent.

Our surpluses have disappeared.

Mr. PRICE. What are you reading that from?

Mr. GARSTANG. A table we prepared in our office based on figures we got from the Department of Agriculture, sir.

Mr. PRICE. Would you submit that for the record?

Mr. GARSTANG. Yes, I would be glad to do that.

(The table reads as follows:)

Milk production, 1964-66

[Millions of pounds]

Month	1964 production	1965 production	Percentage change 1964-65	1966 production	Percentage change 1965-66
January-----	10,201	10,419	+2.1	9,865	-5.3
February-----	10,018	9,820	-2.0	9,254	-5.8
March-----	11,136	11,155	+0.2	10,645	-4.6
April-----	11,375	11,305	-0.6	10,874	-3.8
May-----	12,404	12,206	-1.6	11,707	-4.1
June-----	11,837	11,742	-0.8	11,397	-2.9
July-----	10,877	10,856	-0.2	10,506	-3.2
August-----	10,234	10,046	-1.8	9,799	-2.5
September-----	9,655	9,404	-2.6	-----	-----
October-----	9,745	9,446	-3.1	-----	-----
November-----	9,446	9,106	-3.6	-----	-----
December-----	10,072	9,556	-5.1	-----	-----

NOTE.—Table prepared by the National Milk Producers Federation.

Source: U.S.D.A.

Therefore, what the Secretary was faced with was a very sharp downward curve of milk production which already had gotten to the place where the surpluses had disappeared. We are about in balance now, but the decline is still continuing. At the time the Secretary acted, we were faced with a very serious prospect of a substantial shortage of milk. This, in turn, would have caused violent price fluctuations, which is not good for the consumer, nor for the dairy industry.

Mr. STAFFORD. Do you attribute any part of this reduced production over the 1966 months to high beef prices in the sell-off of dairy cattle for beef purposes?

Mr. GARSTANG. That was a contributing factor.

Also the surplus production of milk which we have had for about 7 or 8 years, with prices at 75 percent of parity, has something to do with it. There has been building up in the dairy farmers for several years a very deep-seated dissatisfaction.

They were already disgusted and, when the opportunity came to dispose of some of their herds for beef at rather substantial prices, they went out of business. The situation is serious and the decline in production is still going on.

Mr. STAFFORD. Another factor that may have influenced that selling of cattle has been the high price of labor and the high price of feed for cattle, and the general cost-price squeeze he has been caught in. Is that not correct?

Mr. GARSTANG. He has been in a cost-price squeeze, and labor is a real tough problem for dairy farms.

We would like to endorse, Mr. Chairman, also, the suggestion made by Congressman Stalbaum that the bill be expanded to include some of the price increases that resulted from increases in support levels.

Two things are involved: Support level is the price of all manufactured milk across the United States. The price level in Federal milk marketing orders applies only to an area which is covered by that marketing order. Both of them affect the price of fluid milk which goes into these military contracts.

Comment also was made that bids were made on Government contracts having in mind that the order issued by the Secretary of Agriculture called for a decrease in price on a specified date.

When these decreases were suspended, so that they did not take effect, exactly the same result followed as if there had been a price increase, so that should be treated the same as if there were a price increase.

Here you had an order, issued publicly and which the Government itself put out, stating that the price would go down on a certain date. When it did not go down, by Government action again, the result was the same as if the price had been increased.

Mr. STAFFORD. These milk market order price fluctuations used to be tied to seasonal milk supply, did they not?

Mr. GARSTANG. Yes.

Mr. STAFFORD. The fact that in the spring the majority of the cattle freshened and there was a lot more milk available, and later it gradually tapered off?

Mr. GARSTANG. That is right. The ones I am talking about primarily are the seasonal decreases which are still in some of the orders. The Secretary simply did not dare let them go down, because the downward trend in the production curve was getting serious.

That is all I have to say on this, Mr. Chairman.

Mr. PRICE. Thank you.

Mr. GARSTANG. To sum up, all we are asking is that the Government, in its own contracts, recognize that an adjustment should be made where the Government itself has changed, without adequate notice to the contractor, the basic price that went into the contract.

Mr. PRICE. Thank you very much, Mr. Garstang. You have made a good contribution to the hearings this morning, sir.

I wonder if Mr. Sullivan, representing the Department of Agriculture, is in the room?

Is any representative of the Department here?

If not counsel will get in touch with the Department and advise them of our desire to have the information requested by Mr. Stafford, and, if possible, to get it up this afternoon, so that the committee can examine it before tomorrow morning's hearings.

Without objection we shall insert in the record at this point a letter which the chairman has just received from the two Senators from Colorado, Senator Allott and Senator Dominick, in support of the legislation before us.

(The letter referred to is as follows:)

U.S. SENATE,
Washington, D.C., September 20, 1966.

Hon. MELVIN PRICE,
Chairman, Subcommittee No. 3, Committee on Armed Services, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We are very pleased to learn that on September 21, 1966, your Subcommittee will consider H.R. 17500, to amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

We endorse the objectives of H.R. 17500, which is identical to S. 3834, sponsored by us in the United States Senate, to remedy an inequitable situation existing under Defense Department contracts for the procurement of milk since the issuance of new milk support pricing orders by the Secretary of Agriculture earlier this year.

It is our hope that favorable action can be taken on this measure in both houses of Congress during the remaining days of this session, and we appreciate the opportunity to express our support for H.R. 17500.

Sincerely,

GORDON ALLOTT,
U.S. Senator.
PETER H. DOMINICK,
U.S. Senator.

Mr. PRICE. The committee will recess until tomorrow morning at 10 o'clock, when the first witness will be Mr. W. G. Sullivan, Deputy Director, Dairy Division, Consumer and Marketing Services, Department of Agriculture.

The hearing will be in recess.

(Whereupon, at 12:05 p.m., the hearing was adjourned, to reconvene at 10 a.m. of the following day.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 3,
Washington, D.C. September 22, 1966.

The committee met, pursuant to notice, at 10 a.m., room 2216, Rayburn House Office Building, Hon. Melvin Price (chairman) presiding.

Mr. PRICE. The committee will be in order.

Before starting with the regular scheduled witnesses this morning, the committee will hear from Mr. Lynn C. Paulson, executive vice president and general counsel for the National Independent Dairies Association. Mr. Paulson would you come around, please?

Mr. Paulson, do you have a statement?

STATEMENT OF LYNN C. PAULSON, NATIONAL INDEPENDENT DAIRIES ASSOCIATION

Mr. PAULSON. Yes. On behalf of the National Independent Dairies Association, I want to endorse the bills that are being discussed here. And just briefly, I want to describe our association.

We are an association of the independent dairy processors in the United States. We have 320 members, in 48 States. And many of my members, many of our members, are adversely affected by what has happened with regard to the price of the raw product.

I have nothing more to say than that we heartedly endorse the bills that are pending before this subcommittee.

Mr. PRICE. Mr. Paulson, the chairman is very familiar with your organization and happens to know the work and the effort you are doing on behalf of the independent dairies throughout the country. I am very familiar with your organization.

Mr. PAULSON. Thank you, Mr. Chairman.

Mr. PRICE. Thank you very much, Mr. Paulson.

Mr. PAULSON. Thank you.

Mr. PRICE. The next witness will be Mr. W. G. Sullivan, Deputy Director, Dairy Division, Consumers and Marketing Service, of the Department of Agriculture. Mr. Sullivan.

Mr. SULLIVAN. Thank you.

Mr. Chairman and members of the committee—

Mr. PRICE. Before you proceed, Mr. Sullivan, the Chair would like to announce that we are in receipt of the information requested yesterday by Congressman Stafford of the Department of Agriculture. It will be accepted for the record and made available to the members.

(The information referred to is as follows:)

The Agricultural Marketing Agreement Act which authorizes the issuance of milk marketing orders specifies that the Secretary of Agriculture shall establish minimum prices for milk in regulated markets at levels which will tend to achieve an appropriate balance between the deliveries of milk by producers and sales of milk as Class I (i.e., milk for beverage purposes), including the maintenance of a necessary reserve to insure against daily and seasonal variations in supplies and sales of milk.

This is a so-called "supply-demand" price standard. Under it Class I prices are increased when deliveries of milk by producers diminish relative to Class I sales. Contrariwise, when deliveries of milk by producers increase relative to Class I sales, Class I prices are reduced. These increases and decreases in Class I prices are largely achieved automatically through the use of Class I price formulas.

There are two general types of such formulas in use in Federal orders. One is the so-called "basic price" formula used in all Federal milk marketing orders except those applicable in the Northeast markets. This type of formula provides that Class I prices will be based on a measure of manufacturing quality milk prices in the so-called "Minnesota-Wisconsin price series".

To this price series is added a specified differential which accounts for the extra value applicable to Class I milk relative to manufacturing quality milk due to the added quality of Grade A milk used for beverage consumption and to higher and differing costs of producing milk in the several areas of the United States. These formulas also often provide automatic adjustments—usually referred to as "supply-demand adjustors"—which increase or decrease this added differential when producer deliveries relative to Class I sales in a particular market decrease or increase, respectively. Other adjustments are also made to account for seasonal variations in supplies and sales of milk.

In the Northeast markets so-called "economic index" type formulas are used. These differ from the "basic price" type formulas in that indexes of general economic activity such as the wholesale commodity price index, a consumer income index and indexes reflecting price changes in dairy feeds and in farm wage rates are substituted for the Minnesota-Wisconsin price series. These formulas also have "supply-demand adjustors" and adjustments to account for seasonability in supplies and sales of milk.

These formulas have been generally successful in reflecting in Class I price levels changes in supply and demand conditions in the dairy industry. However, on occasion, these formulas may fail to reflect adequately the changing economic situation in a single market or in a number of markets. In these cases, it is necessary for the Department by specific action, that is, by amendment or by the suspension of certain terms of the Class I formulas, to effect other or additional changes in the Class I pricing formulas.

Mr. PRICE. Mr. Sullivan, would you proceed?

STATEMENT OF W. G. SULLIVAN, DEPARTMENT OF AGRICULTURE

Mr. SULLIVAN. In response to the committee's request, I present the views of the Department of Agriculture on H.R. 17500, 89th Congress. This bill would amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

The purpose of the bill is to require that certain future Department of Defense contracts include a provision for equitable price adjustments for increased or decreased prices paid to producers for milk for fluid use ordered by the Secretary of Agriculture after the

date of bid. The bill also would provide relief for contractors who had contracted to sell milk after March 1, 1966, who have suffered losses because of increases in producer prices for milk for fluid use ordered by the Secretary of Agriculture after that date, where the contracts contain no provision for such price adjustment.

Although this bill is primarily concerned with the procurement activities of the Department of Defense, this Department has no objection to the general purpose to which it is directed. We do have some question as to the intent of the words, "increases or decreases in the producer price of fluid milk for beverage purposes ordered by the Secretary."

Federal milk orders establish minimum prices that milk dealers must pay producers in 71 fluid milk markets throughout the country. Almost two-thirds of the fluid milk sold in this country is priced under the terms of Federal milk orders. These orders provide changes in class I prices; that is, the price of milk for beverage purposes, through the use of pricing formulas. These formulas automatically change prices in two ways: (1) seasonal price changes, and (2) changes based on variations in certain indexes of economic conditions affecting the fluid milk industry. Moreover, milk prices may be influenced by the level at which the Secretary of Agriculture supports the price of manufacturing quality milk, through the influence which the support price level has on the level of the Minnesota-Wisconsin price series. This series is one of the important factors used in determining the level of class I prices in most Federal milk orders.

We do not recommend that these types of changes be considered as "ordered by the Secretary of Agriculture." For, as in the case of specific seasonal price changes, they may be easily determined beforehand or, as in the case of the general economic indexes and of the Minnesota-Wisconsin price series, they are a consequence of the normal play of economic forces. Forecasting the effect on class I prices of the normal changes in the economic indexes or of the Minnesota-Wisconsin price series would appear to be normal business risks.

Although changes in the level of dairy price support may influence class I prices, we do not recommend that such changes be considered as "ordered by the Secretary of Agriculture." Changes of this kind have occurred numerous times in the past and have included both increases and decreases. However, so far as we know, they have not caused unbearable burdens on the milk industry. Moreover, the ascertainment of the effect on class I prices of a change in the support levels for manufacturing milk would be extremely difficult to determine precisely.

Under the Agricultural Marketing Agreement Act, which authorizes the issuance of milk orders, the Secretary by direct action, that is, by amendment or by suspension of certain provisions, may change the level of the class I prices in a milk order. Changes resulting from these types of direct action would be the only ones which would seem to fall under the term "ordered by the Secretary of Agriculture." This could be made clear by inserting after the words "Secretary of Agriculture" on page 2 of the bill at line 6 and line 15 the following: "by amendment of a milk marketing order or by suspension or termination of a provision of such an order."

We also call attention to the term "on or after March 1, 1966" which appears to us to be ambiguous. The period of application of this provision could be clarified by striking the language beginning on line 10 and ending on line 11 of page 2 of the bill "the procurement of milk which was being performed on or after March 1, 1966," and substituting therefor the following: "providing for the delivery of milk between March 1, 1966, and the date of enactment hereof,".

Apparently the circumstances giving rise to the proposed legislation are that recently certain unusual actions were required under the milk marketing order program administered by the Department. Beginning in about October 1965 it was apparent that dramatic reductions in national milk supplies were taking place. In the face of this supply condition and in order to achieve the objective of the Agricultural Marketing Agreement Act of assuring adequate supplies of milk in regulated markets, the Secretary by direct amendment action held class I prices in a number of markets at not less than the November price for the period December 1965 through February 1966.

This action prevented seasonal declines in class I prices which would otherwise have taken place on December 1 in these markets. Subsequently, comparable action was taken in a number of additional markets effective January 1 and February 1, 1966.

Reports on national milk production available in the month of February 1966 showed that the milk supply situation had worsened. National milk production was down over 5 percent from the same period a year earlier. In the great dairy States of the Midwest dramatic reductions had taken place.

For example, in Minnesota milk production was down 14 percent, in Iowa it was down 15 percent, in Wisconsin and Michigan it was down 7 percent.

These conditions called for immediate action. Accordingly, effective March 2, 1966, by the suspension of certain provisions in Federal milk orders which provided for seasonal declines in class I prices, the Secretary prevented these seasonal declines pending the holding of a hearing on which to base longer range actions. On the basis of these hearings and effective April 10, the Secretary withdrew the previous suspension action and amended certain orders which provided for seasonal declines in class I prices. These amendments increased the class I price in these orders by 22 cents per hundredweight (about one-half cent per quart) over what they otherwise would have been through June 1966.

In markets where no seasonal decline in class I prices would have occurred, the amendments established class I prices for the period through June at a level not less than the April price.

Because the above actions would expire at the end of June, further hearings were held to determine appropriate actions to be taken for a period subsequent to June. On the basis of these hearings, amendments were issued to all orders.

In those orders which used the Minnesota-Wisconsin price series as a factor for determining class I prices, it was specified that the Minnesota-Wisconsin price series would be considered as not less than \$4 per hundredweight for the period July 1, 1966, through March 31, 1967. Changes were made in the Northeast orders (which do not use the Minnesota-Wisconsin price series as a factor) which resulted in

class I price increases of about 20 to 22 cents per hundredweight for the period July 1, 1966, through March 31, 1967.

These were extraordinary actions taken to meet what was an extremely unusual, if not a unique situation. By taking prompt and decisive action to increase price returns to dairy farmers, the Secretary hoped that further drastic reductions in milk supplies could be avoided and that thereby even greater milk price increases could be forestalled in the future. Since these conditions developed so rapidly, it is, of course, possible that they were not foreseen by contractors furnishing milk to Government facilities.

Mr. PRICE. Thank you very much, Mr. Sullivan.

Are there any questions of Mr. Sullivan?

Mr. MORGAN. I have one.

Mr. PRICE. Mr. Morgan.

Mr. MORGAN. Dr. Hall may have some.

Mr. PRICE. Doctor, do you have any questions at this point?

Mr. HALL. Well, I appreciate Mr. Sullivan's statement. I think it clears up some of the questions that were in the minds of some of the members of the committee from yesterday about different areas.

Specifically at the bottom of page 5, Mr. Sullivan, what did that make the total price per hundredweight in the Northeast Order Area, above you say—you say it was considered as not less than \$4 per hundredweight for the period July 1, 1966, through March 31, 1967, and then you say in the Northeast, not using the Minnesota-Wisconsin price as a factor, you had an increase of 20 to 22 cents a hundredweight.

All I want to know is what does that make the total in the Northeast?

Mr. SULLIVAN. Congressman, I am not sure I am prepared to answer that. Let me see.

The figures I have are a little too early to answer that question. I could write you the answer.

Mr. HALL. Well, roughly what is it? I won't hold you to it.

Mr. SULLIVAN. Oh, it would be over \$6 in the Boston—that is, the New England and New York orders. It was about \$6.20 in Philadelphia.

Mr. HALL. That is helpful to me. That is what I want.

What is it in the Southeast United States, in view of the current order that we are working under, say South Carolina, Georgia, and Florida?

Mr. SULLIVAN. Well, in—

Mr. HALL. It has always been notoriously high compared with the rest of the United States down there.

Mr. SULLIVAN. We do not have prices sir, except in Florida, and in southeast Florida it was about \$7 and perhaps a little over \$7.

Mr. HALL. That is what I wanted to bring out there.

Now, Mr. Sullivan, you go into considerable detail, and as I understand it the Department has no particular objection to this bill, and from your very last statement you acknowledge that this was not foreseeable by people making these contracts, and I, for one, think that is right and I am glad you said it, but in leading up to that conclusion you take some considerable—with some considerable reluctance if not outright objection, you don't want to say that the Secre-

tary of Agriculture ordered these things. You are questioning the language, to say the least. And you point out that it is not an order; it is an amendment.

I know enough about milk marketing orders to understand that. But then in the midportion of your statement, it is in explanation, which we appreciate, of the difference—but as far as the end result is concerned aren't we going all the way around the barn to lick the mule, instead of hitting him over the head with a single tree, as far as the difference between an order and an amendment goes?

The end result is the same, it is not?

Mr. SULLIVAN. I did not mean, Congressman, to draw a distinction between an order and an amendment. But the distinction I attempt to draw is that contractors who are regulated by our orders were ordered to pay more, but contractors not regulated by our orders were not in the legal sense at least ordered to pay more, and while we regulate—

Mr. HALL. That would be roughly one-third.

Mr. SULLIVAN. One-third, yes, sir.

Mr. HALL. Who are outside of the marketing orders area.

Mr. SULLIVAN. Yes, sir.

Mr. HALL. That is the spirit in which you take umbrage, so to speak, at the words "The Secretary ordered," and then point out in detail that it does affect just two-thirds, but of course the other third—this greater competition has to go along with this.

So for all intents and purposes, it can be said that the Secretary's action, of an order or amendment to an existing marketing order, or whether it is influence in support or parity or what not, it led to the same sort of result which in the end would affect any sensible contractor.

Is that a fair statement?

Mr. SULLIVAN. We are not informed—we don't have information on which we would be willing to rely that contractors not under our regulation were, in fact, either by law or by economics, required to pay more, or by contract. We don't know.

We have generalized information about the way contracts work in unregulated markets, and perhaps in State-regulated markets where we would certainly not be sure that because certain prices went up that necessarily with regard to contractual milk the prices payable to producers would go up commensurately.

We don't have information on which we can rely that that is true.

Mr. HALL. Did you make any effort to find out if it were true either directly or indirectly, Mr. Sullivan?

Mr. SULLIVAN. No, sir; not a specific effort. All we would be relying on is a general—what we consider to be a general—understanding of the way the milk business runs with regard to these contracts.

Mr. HALL. You are not trying to tell me that you just have a hunch that maybe it was affected?

Mr. SULLIVAN. Yes, sir; a hunch that perhaps in all cases these price increases were not translated into increased returns to dairy farmers on contract milk.

Mr. HALL. Now, Mr. Sullivan, Congress has allowed the Department of Agriculture and provided funds therefor, for an Agricultural Marketing Survey and Reporting Service.

Mr. SULLIVAN. Yes, sir.

Mr. HALL. Are these prices not reported from all sources through the various States on that Marketing Survey and Reporting Service?

Mr. SULLIVAN. As I understand it, Congressman, the Department in this activity relies upon the voluntary submission of information by milk handlers and others.

I know that military milk sometimes has a special price payable to it, that is for it, and yet so far as I recall and understand those special prices are not reported by the Department of Agriculture—or to the Department of Agriculture, in its usual statistical work.

Mr. HALL. Well, I understand that as far as specific contractors for defense posts, camps, and stations reporting what they pay for milk. But don't the producers get in on this telegraphic, telephonic network that goes into the various State agricultural departments and then is corelated or correlated and coordinated and forwarded to your Marketing Service here in Washington each day from the producer on up?

Mr. SULLIVAN. On the prices of fluid milk, it is on a monthly basis, sir; not on a daily basis.

In other words, I know that you are referring to butter prices, cheese prices, and the like of that, which are on a daily basis. But the prices payable to dairy farmers for fluid milk are gathered after the event and usually on a monthly basis.

They are normally gathered by the State statisticians and then transmitted to Washington for collation. But this is not the same kind of thing that our market news people gather daily with regard to the pricing of such commodities as butter, cheese, nonfat—

Mr. HALL. Certainly not the same as beef in the livestock markets.

Mr. SULLIVAN. No, sir. The price of milk is not reported the same as beef.

Mr. HALL. Well, I sure recommended, as one that is vitally interested and affected and, I think, knows considerably about it, that you look seriously—this is one of the places where the trickle-up theory might well be applicable.

You go back and make a recommendation that this be included in that daily marketing reporting system and survey. I think it would be very beneficial. But that is just a fallout of this general testimony here. I can understand how it would be easier. I know that it is easier to determine after the premium rates and the bonuses and the prices paid for dumped milk has been weighed and analyzed and scaled and determined, whether it is this class or that class, and the chit has been given to the hauler who goes back to the farmer-producer on the farm, and so forth.

But with such a remarkable marketing service analysis, and so forth, as we have established—and there were some bugs in it originally, but I think they have been worked out very, very well, and equity and justice has been developed in other markets for this Department of Agriculture Marketing Service—that this might well be worthwhile.

Mr. SULLIVAN. Would the Congressman care to have me comment on that?

Mr. HALL. Sure.

Mr. SULLIVAN. The sale of whole milk both for manufacturing and for fluid milk is carried on on a monthly basis.

Prices are established for a month at a time, often retroactively, but nevertheless for a month at a time, and as a consequence of that it wouldn't be normally possible to ascertain them on a daily basis, because the contracts, the milk orders, State milk control—the convention is to establish prices on the basis of a month at a time.

Mr. HALL. Well, the last thing in the world I want you to do is to get into the process of helping these people in the open marketplace establish their prices certainly retroactively.

But just as far as marketing is concerned, I think maybe if we went one step lower to the producer, this might be done in advance.

Well, I think I have no objection either to the suggested amendments nor do I have any further questions, except the one on page 3 where you say "So far as we know they have not caused unbearable burdens on the milk industry."

Taken out of context, it would appear to me, Mr. Chairman, from the evidence we heard here yesterday, that either through this marketing service reporting that I am talking about or through the witnessing of these hearings or something else there would be a very real question either directly or indirectly, either with the two-thirds that are affected by marketing orders and the amendments thereto, or the one-third that are affected only indirectly by fallout and competition, which you do not directly control—I just don't know how anyone could say that is knowledgeable in this area that there has been no cause or unbearable burdens.

What do you mean by an "unbearable burden"?

Mr. SULLIVAN. First, may I say that this refers solely to price support changes, not to price changes ordered under milk orders? We refer here only to those changes which may take place only once a year under price support.

Mr. HALL. Dairy price support and its influence on class I prices?

Mr. SULLIVAN. And we had the price-support program as the Congressman knows—well, we have had it on and off since 1936, but under present authority since 1946. Prices have gone up and have come down. The dairy industry has lived with this. And it is on the basis of that that we say apparently price-support changes have not caused unbearable burdens.

Mr. HALL. Of course there is no question but what the price support of class I does affect manufacturers' milk prices in your mind, is there?

Mr. SULLIVAN. Would you please state that again, sir? I don't quite understand.

Mr. HALL. Do you recognize that there is a direct relation between the dairy price support for class I milk and class III or manufacturers' milk?

Mr. SULLIVAN. Yes, sir. In all orders where we use the Minnesota-Wisconsin price series, as we say, the level at which the Secretary supports manufacturers' milk can have an influence on class I prices.

It is not, however, an exact or direct influence.

For instance, the Secretary of Agriculture has raised price supports from \$3.25 to \$4 per hundredweight since April 1965.

The price of manufacturing milk, the Minnesota-Wisconsin price series, is \$1 a hundredweight higher than it was before he raised it 75 cents a hundredweight.

Now, it might appear that the Secretary's influence was 75 cents of the dollar, but in fact as best we can estimate of the \$1 increase that has taken place in the Minnesota-Wisconsin price series, only 30 cents is a consequence of the Secretary's price-support activities.

And this is why we call attention to the difficulties of translating into class I prices the effect of the Secretary's decisions and activities under the price-support program.

Mr. SULLIVAN. It is a consequence of the free market effects, increasing the price of butter and the price of cheese.

Mr. HALL. What about taxes?

Mr. SULLIVAN. Well, taxation and taxes are a little outside my competency, sir.

Mr. HALL. What about labor costs, minimum wage for dairy farm assistance, and so forth?

Mr. SULLIVAN. Well, I can only go this far confidently:

There has been a reduction in the supply of milk, a very significant reduction in the supply of milk, and this reduction in the supply of milk has resulted in the free market raising the price of the products made out of milk, butter, and cheese.

This is a normal supply-demand reaction. When a commodity is short in supply the price goes up. This has happened.

Now, why did the supply go down? There is a lot of opinion on that.

I myself am not an expert. I can recite to you some of the opinions that I have heard on why the supply of milk went down.

Do you wish me—

Mr. HALL. No. I think probably, since you have disqualified yourself as an expert in that area, maybe we know more about that than you do.

Did you ever produce any milk yourself?

Mr. SULLIVAN. No, sir.

Mr. HALL. Or sell it?

Mr. SULLIVAN. No, sir.

Mr. HALL. Anybody on your staff ever do it?

Mr. SULLIVAN. I believe they have; yes, sir. Some of our staff are ex-farm boys.

Mr. HALL. Mr. Chairman, I think I have no other questions.

Mr. PRICE. Mr. Sullivan, yesterday in testimony from the Milk Industry Foundation it was stated that the processor had asked the Secretary of Agriculture to exempt from the price increase milk used to service Government contracts, and this request was denied.

Could you give us the rationale behind the denial by the Secretary of this request?

Mr. SULLIVAN. Yes, sir.

First, the statute requires the Secretary to fix uniform minimum prices for milk according to its use. And as we understand the intent of the Congress in this regard, and as it has been interpreted as long as there has been an Agricultural Marketing Agreement Act, which

has been since 1937, all milk consumed as whole fluid milk has been class I.

Now, what was being asked was that with regard to milk that would be used as whole fluid milk, under military contracts, that a lower price be established than for milk being used in the same way and for the same purpose but sold to the general public.

In addition to the legal background that I have just recited there also seemed to be, and there was, a question of economic equity. It was apparent that higher prices were needed to get an adequate supply of milk. We had to get a certain amount more income back to dairy farmers.

If we had exempted the military, we would have had to raise the price to make up that exemption to the general public. And so, on those two bases, we denied this special pricing on military milk and continued to do as we had always done before, apply the same class 1 price to all class I milk.

Mr. PRICE. In some areas does class II milk qualify for defense contracts?

Mr. SULLIVAN. Not for use as whole fluid milk. All whole fluid milk is class I in all Federal milk orders.

Mr. HALL. That is right.

Mr. PRICE. Mr. Hicks?

Mr. HICKS. Mr. Sullivan, you indicate that you don't profess to be an expert on what caused this milk to go down, but apparently you thought or the Secretary thought if the price was raised it would have some influence on it?

Mr. SULLIVAN. Yes, sir.

Mr. HICKS. Well, what did this price raise seek to correct—or what actual physical thing was there that was causing this reduction in milk?

Mr. SULLIVAN. The general problem appears to be that dairy farmers were not receiving enough income to induce them to stay in the business, and many of them were leaving the business, and by increasing the price of milk the Secretary hoped to retain more dairy farmers in the milk production business.

In addition, as a legal proposition I guess you would say, the statute has this so-called supply-demand standard of price fixing in it.

The idea of it is to get an appropriate balance between the deliveries of milk by farmers and the use of milk as class I.

Now, deliveries of milk by farmers diminish relative to sales of class I. The idea is to increase the price, to get more milk, and contrary-wise, if the deliveries of milk by farmers exceed the needs of the market for class I, then the price goes down. And this is achieved by these formulas, largely achieved.

Mr. HICKS. As I understood your statement, you said that this came on with dramatic suddenness?

Mr. SULLIVAN. Yes, sir.

Mr. HICKS. The Department follows this all the time. Does the Department agree with this idea that the dairy people were not getting enough, or was it sort of like the airline strike here, where they reached a point and then the people that were concerned said "No, this isn't enough," and wanted to go a little higher?

Mr. SULLIVAN. The Secretary certainly agreed the dairy farmers were not getting enough. He has said on the basis of uncontrovertible facts that the dairy farmers are the least rewarded of all of agriculture.

Mr. HICKS. Well, this didn't come to you as a surprise, then?

Mr. SULLIVAN. The diminution in the supply came as a surprise.

Mr. HICKS. Oh, they had been long suffering?

Mr. SULLIVAN. They had been long suffering.

Mr. HICKS. Then they just reached the end and that surprised you?

Mr. SULLIVAN. The dramatic reaction—the dramatic reduction of supplies that came on within a month or two was the surprise.

Mr. HICKS. Now how fast did this raise, or how fast can there be a reaction to stop this?

Mr. SULLIVAN. Well, the formulas are a little slow acting. And that was certainly the situation here. In the normal play of supplies and sales in the dairy industry, these formulas will do a pretty good job. Certainly they do better than having nothing.

But when you have a dramatic change, as we had here, the formulas simply aren't geared up to reacting that promptly.

Mr. STAFFORD. Would the gentleman yield there?

Mr. HICKS. Sure.

Mr. STAFFORD. Isn't the fact that a lot of dairy cattle were sold as beef one of the reasons for the sudden reduction? And, of course, it is going to take time to rebuild the herds that have been sold off. Isn't that the fact?

Mr. SULLIVAN. Yes; that is certainly one of the most important influences; yes, sir.

Mr. HICKS. I have no further questions.

Mr. STAFFORD. I have just one question.

Mr. PRICE. Governor Stafford.

Mr. STAFFORD. I have noted the changes which the Department has recommended in the bill. My question is this:

Taking into consideration the fact that there are different formulas for the Northeast and the rest of the country in milk-marketing orders, as you have recommended the changes in the bill, in your opinion would it be fair to the producers in all parts of the country who are selling to—or the handlers who are selling to—military installations?

Mr. SULLIVAN. The Department did not consider this question of fairness. We considered only the practicality of knowing and of relating this bill to tangible actions that could be measured and really ascertained. And it is on the basis of practicality that we suggest confining this to those things that milk dealers can read in the Federal Register or the Department of Defense can read in the Federal Register and ascertain precisely what the effect is.

These other things are less precise in their effects and we just raise a question about the practicality of going beyond those things that you know precisely what has been done.

Mr. STAFFORD. Well, my question may be—I appreciate that answer. I would be derelict in my duty as a Representative of the Eastern States and Vermont, which is a large milk producer in the eastern milkshed, if I let this legislation go through without understanding that the eastern milk handlers, if they are in the same plight that others have been could not get the same relief that others in the western

part of the country would under this bill. And I assume they would be able to get the same relief?

Mr. SULLIVAN. Of course, most of Massachusetts and all of Connecticut and Rhode Island are under Federal orders.

Mr. STAFFORD. That is right.

Mr. SULLIVAN. So all facilities located there would be dealt with.

Many handlers who sell in Vermont would also be regulated by the Massachusetts-Rhode Island order.

And then, of course, all of the most important parts of New York State and Pennsylvania are also regulated. In the Northeast, it would take care of a great deal of the problem. But it might not take care of all of it.

Mr. STAFFORD. Thank you. That is all I have, Mr. Chairman.

Mr. PRICE. Mr. Ichord.

Mr. ICHORD. Thank you, Mr. Chairman.

I apologize for being absent, but it was necessary because of my attendance to duties on another committee.

Mr. Sullivan, I have only one question: I saw some time ago some statistics on the average age of farm producers in the Nation. This included all farmers, dairy farmers, beef farmers, grain producers, et cetera. They indicate a very alarming situation as to what this country is going to be faced with in the future. I am wondering if you made any study in the dairy industry as to the average age of your dairy farmer?

Mr. SULLIVAN. Several studies of that kind have been made, Mr. Congressman. I am not able to quote from them, but they all certainly come up with the showing that dairy farmers are normally pretty elderly people.

Mr. ICHORD. I would think that the age of dairy farmers would probably be older than the average age of all farmers, because most of them have been in the business for quite a while.

Mr. SULLIVAN. These studies show they are elderly, but whether they are more elderly than other farmers, I am not sure.

Mr. HALL. If the gentleman would yield, I think I can advise that the average age now in America is 56 for a dairy farmer.

Mr. ICHORD. For a dairy farmer?

And there are very few young people going into the business of dairy farming.

I think this is one factor that the Department of Agriculture had better be concerned with very, very much in its practices and policies. This is something that you are going to have to look ahead to in the setting of prices, and not wait until you have a situation like this, when your supply decreases and you increase the price in order to increase the supply.

You are going to be—this is something that you have to look ahead a long way, in order to correct. We have to have some way of getting young people into this dairy business, or in 9, 10, or 15 years we are really going to be faced with a serious problem in this country.

Thank you, Mr. Chairman.

Mr. PRICE. Mr. Love.

Mr. LOVE. I have no questions.

Thank you.

Mr. PRICE. Mr. Sullivan, are you familiar with the revision of this legislation suggested by the Department of Defense?

Mr. SULLIVAN. Not really, sir. This thing came upon us pretty rapidly here recently and we got some papers from the Department.

Mr. PRICE. Would you mind remaining through the rest of the morning to hear the explanation of the Department witnesses, and perhaps comment on it, to see whether or not they meet the points that you raised for desirable amendments from the Department of Agriculture?

Mr. SULLIVAN. Yes, sir; I would be glad to.

Mr. PRICE. Thank you. Thank you very much, Mr. Sullivan.

The next witness will be Mr. J. Edward Welch, Deputy General Counsel of the General Accounting Office.

Mr. Welch.

STATEMENT OF J. EDWARD WELCH, GENERAL ACCOUNTING OFFICE

Mr. WELCH. Mr. Chairman and members of the subcommittee, I have with me Mr. Stewart Goldstein, an attorney in our Office of General Counsel.

We appreciate this opportunity to express our views on H.R. 17500.

We delivered to you this morning a copy of a letter from the Comptroller General which contains our views, and if I may, I will read the pertinent part of that letter.

Mr. PRICE. Yes.

And then the entire letter will be included in the records of this hearing, without objection.

Mr. WELCH. Fine.

H.R. 17500 would amend chapter 141 of title 10, United States Code, to provide that all future contracts of the Department of Defense for the procurement of milk during a period in excess of 90 days shall contain a price adjustment clause to compensate for increased or decreased prices the contractors may have to pay for milk as a result of changes ordered by the Secretary of Agriculture in the producer price of fluid milk.

We have in the past discussed with representatives of the Defense Supply Agency the possible desirability of including an escalation clause in Defense Department milk contracts. It is our opinion that the use of such a clause would be fair both to the Government and to contractors. In the case of fluid milk the prices which must be paid to producers are subject to controls beyond those normally present in the market place. Where, as here, these abnormal controls are exercised by the Federal Government itself, it would seem only equitable to provide that a Federal contracting agency assume the risk of abnormal contract cost fluctuations resulting from the actions of another Federal agency. Since the price of fluid milk normally fluctuates on a seasonal basis, we believe any price adjustment clause should be designed to cover only abnormal price fluctuations. This could be accomplished by inserting the word "abnormal" in line 4, page 2 of the bill before the word "increases." With this change, we have no objection to the first portion of the bill.

The bill would further authorize price increases in milk contracts being performed on or after March 1, 1966, where it is determined that contractors have suffered or will suffer losses under such contracts because of price increases ordered by the Secretary of Agriculture after that date. Ordinarily the General Accounting Office does not favor the amendment of Federal contracts without consideration. We believe the assumption of risk by both parties inherent in a fixed-price contract is a normal element of competitive procurement. In the

instant situation, as mentioned above, an element of risk existed beyond that normally found in the market place, and this added risk was attributable to actions by the Government itself. For this reason we do not object to the granting of relief. However, we believe that any price adjustment under existing contracts should be limited to actual losses sustained, exclusive of diminution of profits. We therefore suggest that the language "an equitable price adjustment for increased prices paid by a contractor for such milk" in lines 12 and 13, page 2 of the bill be changed to "for payment of losses incurred by a contractor, excluding diminution of profit.". Also, in line 1, page 3, we suggest changing "will suffer" to "has suffered."

If so amended, we would not object to the latter part of H.R. 17500.

(The complete letter above-referred to is as follows:)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 22, 1966.

B-108902.

Hon. MELVIN PRICE,
Chairman, Subcommittee No. 3,
Committee on Armed Services,
House of Representatives.

DEAR MR. CHAIRMAN: Receipt is acknowledged of your letter dated September 13, 1966, requesting our views on the bill H.R. 17500.

H.R. 17500 would amend chapter 141 of title 10, United States Code, to provide that all future contracts of the Department of Defense for the procurement of milk during a period in excess of 90 days shall contain a price adjustment clause to compensate for increased or decreased prices the contractors may have to pay for milk as a result of changes ordered by the Secretary of Agriculture in the producer price of fluid milk.

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If so amended, we would not object to the latter part of H.R. 17500.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Mr. PRICE. Mr. Welch, will you comment on the suggested amendments indicated by Mr. Sullivan that the Department of Agriculture would consider to be desirable?

Mr. WELCH. Mr. Chairman, my familiarity with those suggestions comes only from having heard him this morning, and I would appreciate it if we could have some time to study those suggested amendments in order to know exactly what would be our view with respect to them.

Mr. PRICE. Are you familiar with the revision of this proposed legislation suggested by the Department of Defense?

Mr. WELCH. Well, there again, I had an opportunity to take a quick look at their statement this morning and this was my first familiarity with their suggestions. I don't feel from that that I really am qualified to express an opinion at this time on their suggested changes.

Mr. PRICE. Would you remain to hear their testimony and then if you would care to make further comments, or perhaps give the benefit of your opinion to the committee?

Mr. WELCH. I would be glad to, Mr. Chairman.

Mr. MORGAN. Mr. Chairman.

Mr. PRICE. Mr. Morgan.

Mr. MORGAN. I point out to Mr. Welch that the proposed revision suggested by the Department of Defense does incorporate your second recommendation; that is, limiting this to the loss, to the actual loss sustained, exclusive of diminution of profits.

Mr. WELCH. Yes.

Well, our view on this, which is the same as the Department of Defense's, is that the objective of the bill really is to take care of the dairies which had Government contracts and which, as a result of this abnormal change which was affected last March, have suffered serious losses.

The way the bill is presently worded it would provide for an equitable adjustment. An equitable adjustment can include anticipated profit, and as I say, we believe that it is more in line with the objective of the bill to compensate them for their losses.

Mr. MORGAN. In your opinion, is there any way that these losses can be taken care of, any adjustment made in existing contracts, without this legislation?

Mr. WELCH. In our opinion, there is not.

As mentioned in the Comptroller's letter, we believe that it is the correct legal concept that you can't amend a Government contract against the interest of the Government without a compensating benefit, without additional consideration, and there being none that would support an increase in these contract prices, no additional consideration that we can see, we had to rule that from a strictly legal standpoint it would not be proper to adjust the prices upward in these contracts. While it is true that the problem arose from an order of the Department of Agriculture, it is equally well settled by authoritative precedents in the law that the Government's obligation as a contractor is not affected by the Government's acts in its sovereign capacity.

Mr. PRICE. Any other questions?

Mr. HALL. Mr. Chairman.

Mr. PRICE. Dr. Hall.

Mr. HALL. You do believe in a fair, albeit modest profit for investment and work and sweat and production in the General Accounting Office in particular, and personally; don't you?

Mr. WELCH. Yes, sir; we do.

Mr. HALL. Is your objection to limiting this simply on the basis that it would be difficult to foretell with accuracy?

Mr. WELCH. This is one—this could be one of the main problems involved.

If we are going to compensate for the other than the losses, you run into a situation, or could, perhaps, where you have one contractor who made only a few dollars as against a contractor who made or incurred a small loss and the contractor who made a few dollars would get an equitable adjustment giving him even more.

Mr. HALL. Well, by the very nature of this problem, though, with different marketing order areas and different contracts, they are all going to have to be investigated and settled as individual cases; aren't they, Mr. Welch?

Mr. WELCH. They would have to be I would certainly think.

Mr. HALL. I appreciate your statement and your testimony.

Mr. PRICE. Any other questions?

Mr. HICKS. I would like to.

Mr. PRICE. Mr. Hicks.

Mr. HICKS. Mr. Welch, the proposition here is to at least make this dairy farmer or the dairy whole; is it not? He has suffered loss through no fault of his own is the theory behind this; is that correct?

Mr. WELCH. Generally speaking, I think so.

Mr. HICKS. Well, now, in your answer to Dr. Hall's question, you mentioned the difficulty of ascertaining the profit that this man would have made, but there is the same difficulty involved in ascertaining the loss that he sustained; is there not? I mean it is a matter of proof, that you are going to have to be satisfied in approving this; is it not?

Mr. WELCH. Yes. There will always be that difficulty, and I would suppose it would be comparable in either situation.

Mr. HICKS. As a matter of fact, when you are dealing with the Government it is very seldom, whether it is Internal Revenue Service or whoever it is, that you get very many rulings where there is doubt in favor of the contractor? Would you agree to that, or not?

In other words, if we get it down to just losses here, he is never going to make it back, is he, because there is going to be disallowances along—

Mr. WELCH. Not under his past contract, but, of course, with future contracts, under this legislation, there would be an equitable-adjustment clause contained therein that would take care of him for the future.

Mr. HICKS. Now, actually, if it is just left with equitable adjustment in there and keeping in mind the zeal that the Government goes into these things with, do you think, with just the term "equitable" in there, that the Government is going to be taken advantage of very much?

Mr. WELCH. No; I don't think the Government will be take advantage of.

Mr. HICKS. That is all the questions I have.

Mr. LOVE. Mr. Chairman.

Mr. PRICE. Mr. Love.

Mr. LOVE. I would like to address myself to the future situations, which is provided in 17500.

Could the Department of Defense enter into contracts to have avoided this problem, in your opinion?

Mr. WELCH. I think it would be perfectly legal and appropriate for the contracting agency to have included an adjustment clause in the contract that would have taken care of situations such as this, could they have been foreseen.

Mr. LOVE. Could they have had a termination clause of some sort?

Mr. WELCH. Oh, yes.

There is a standard termination clause prescribed by procurement regulations, termination for convenience of the Government.

Mr. LOVE. So now that this problem has been foreseen, there is adequate law to take care of the proposition that we do not need the law in future contracts; would you say?

Mr. WELCH. I believe, in fact, if this is your question, that this situation, as far as the future is concerned, could be taken care of by procurement regulation, without the necessity of legislation.

Mr. LOVE. In other words, if the Department of Defense would indicate that they would be willing to work out some regulation to handle this matter in the future, a part of this bill would not be necessary?

Mr. WELCH. Yes, sir.

Mr. LOVE. Is that your opinion?

Mr. WELCH. The first part would not be necessary.

Mr. LOVE. The part that is necessary, though, to clinch it is that part which would make it possible to give relief to those who have already made the contracts?

Mr. WELCH. This is correct; yes.

Mr. LOVE. I think that is all.

Mr. PRICE. No further questions?

(No response.)

Mr. PRICE. Thank you very much, Mr. Welch.

Mr. WELCH. Thank you.

Mr. PRICE. Now, the next witness will be Mr. Dale R. Babione, Deputy Executive Director, Procurement and Production, Defense Supply Agency, Department of Defense.

I understand that you will be accompanied by Mr. Julian F. Ross, Defense Supply Agency Small Business Adviser, and by Assistant Counsel, Mr. Albert Raby, Jr.

Would you proceed, Mr. Babione?

STATEMENT OF DALE R. BABIONE, DEPARTMENT OF DEFENSE

Mr. BABIONE. All right, Mr. Chairman.

Mr. Chairman and members of the committee, I am Dale R. Babione, Deputy Executive Director, Procurement and Production, Defense Supply Agency. I am accompanied by Mr. Julian F. Ross, on my left, Defense Supply Agency Small Business Adviser, and Mr. Albert Raby, Jr., on my right, Assistant Counsel, Defense Supply Agency.

We are pleased to have the opportunity to present to you the Department of Defense views on H.R. 17500, 89th Congress, a bill "To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense."

The purpose of the bill is to require the inclusion in future Department of Defense contracts for the procurement of milk of a provision for equitable price adjustments for increased or decreased prices paid by a contractor for such milk as a result of increases or decreases ordered by the Secretary of Agriculture in the producer prices of fluid milk for beverage purposes.

The bill would also provide relief for contractors performing contracts for milk on or after March 1, 1966, who have suffered losses because of increases in produced prices for fluid milk for beverage purposes ordered by the Secretary of Agriculture on or after March 1, 1966, where the contracts contain no provision for such price adjustment.

The Department of Defense agrees with the objectives of the proposed legislation. Under Federal milk marketing orders in effect in parts of 35 States and the District of Columbia the minimum price which the handler (the dairy) is required to pay the producer (the farmer) for fluid milk for beverage purposes is regulated by the Secretary of Agriculture.

In March 1966 and again in June 1966 the Secretary of Agriculture increased these minimum prices. Handlers subject to the orders, and holding long-term contracts with the Department of Defense on the effective date of the orders, were required to pay these increased prices to producers but could not obtain a corresponding increase in their fixed-price Defense contracts. In the absence of legislation the Department of Defense is unable to afford these contractors any relief.

Milk prices have been rising this past year even in those market areas which are not regulated by Federal milk marketing orders. Under subsection (a) of the proposed section, however, only dairies regulated by Federal milk marketing orders would be covered. Other dairies could also suffer losses just as severe because of actions of the Secretary of Agriculture, such as an increase in the support price for manufacturing milk or because of the impact on the market price for milk of amendments or suspensions of Federal milk marketing orders.

The Department of Defense was, prior to the introduction of H.R. 17500, already in the process of exploring several methods for achieving the objectives of the legislation.

Among the methods being considered are use of an escalation provision, shorter term contracts, and provisions for adjusting prices on contract extensions. It might appear that escalation is an obvious method for accomplishing the objective. However, it is not only cumbersome to administer, but difficult to apply equitably to all contractors.

Procurement of milk is made by formal advertising with award made to the low competitive bidder. Hence, an escalation clause would pose problems to which we do not at this point have ready answers.

For example, there would be problems in evaluating bids between handlers in regulated areas and handlers in nonregulated area and in assessing the impact of the marketing order on a particular contract without knowledge of the cost basis for the handler's bid. These problems are compounded by the fact that the price of fluid milk is regulated by over 70 different Federal milk marketing orders and numerous State and local controls. Furthermore, enactment or provisions re-

quiring the inclusion of escalation clauses in milk contracts would establish an undesirable precedent which would tend to undermine the benefits of competitive fixed price contracting.

Producers and suppliers of many other commodities susceptible to cost changes could be expected to seek similar legislation.

Accordingly, it is recommended that subsection (a) of the proposed section be deleted with the understanding that the Department of Defense will develop procedures in connection with the procurement of milk within existing administrative authority to avoid situations comparable to that which occurred as a consequence of the recent actions by the Department of Agriculture.

Subsection (b) of the proposed new section would provide relief for those defense contractors required to pay higher prices to milk producers because of increases in producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture.

However, the bill would not provide relief for those contractors required to pay higher prices to producers because of increases in the price of manufacturing milk ordered by the Secretary of Agriculture.

In areas not covered by Federal milk marketing orders this increase in the manufacturing milk price could have had an effect on the price paid by the Defense contractors to producers for fluid milk for beverage purposes because of its impact on the general market price for milk. In order to provide equitable treatment for all Defense contractors adversely affected by orders of the Secretary of Agriculture in increasing the price of milk, it would be necessary to revise subsection (b) of the bill to provide for price adjustments on the basis of actions of the Secretary of Agriculture increasing the price of milk without limiting such action to increases in producer prices for fluid milk for beverage purposes.

Regulations would provide that contractors seeking relief under such a provision would be required to show how these actions of the Secretary of Agriculture affected the price they were required to pay.

We have submitted for your consideration a draft of a bill incorporating the changes I have suggested.

In addition, the revised draft includes clarification in subsection (b)(3) on line 1, page 3 of the bill. The revised language makes clear that an adjustment in the contract price is not authorized for loss of anticipated profits. Also the section should be numbered 2389 instead of 2390, since the last section in chapter 141, title 10 is now numbered 2388.

The cost to the Department of Defense of the price adjustments authorized by the bill cannot be ascertained at this time.

(The letter from the General Counsel of the Department of Defense is as follows:)

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., September 21, 1966.

Hon. L. MENDEL RIVERS,
Chairman, Committee on Armed Services, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of Defense on H.R. 17500, 89th Congress, a bill "To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense."

The purpose of the bill is to require the inclusion in future Department of Defense contracts for the procurement of milk of a provision for equitable price

adjustments for increased or decreased prices paid by a contractor for such milk as a result of increases or decreases ordered by the Secretary of Agriculture in the producer prices of fluid milk for beverage purposes. The bill would also provide relief for contractors performing contracts for milk on or after 1 March 1966 who have suffered losses because of increases in producer prices for fluid milk for beverage purposes ordered by the Secretary of Agriculture on or after 1 March 1966 where the contracts contain no provision for such price adjustment.

The Department of Defense agrees with the objectives of the proposed legislation. Under Federal Milk Marketing Orders in effect in parts of 35 states and the District of Columbia the minimum price which the handler (the dairy) is required to pay the producer (the farmer) for fluid milk for beverage purposes is regulated by the Secretary of Agriculture. In March 1966 and again in June 1966 the Secretary of Agriculture increased these minimum prices. Handlers subject to the orders and holding long term contracts with the Department of Defense on the effective date of the orders were required to pay these increased prices to producers but could not obtain a corresponding increase in their fixed price Defense contracts. In the absence of legislation the Department of Defense is unable to afford these contractors any relief.

Milk prices have been rising this past year even in those market areas which are not regulated by Federal Milk Marketing Orders. Under Subsection (a), however, only dairies regulated by Federal Milk Marketing Orders would be covered. Other dairies could also suffer losses just as severe because of actions of the Secretary of Agriculture such as an increase in the support price for manufacturing milk or because of the impact on the marketing price of milk of amendments or suspensions of Federal Milk Marketing Orders.

The Department of Defense was, prior to the introduction of H.R. 17500, already in the process of exploring several methods for achieving the objectives of the legislation. Among the methods being considered are use of an escalation provision, shorter term contracts, and provisions for adjusting prices on contract extensions. It might appear that escalation is an obvious method for accomplishing the objective. However, it is not only cumbersome to administer, but difficult to apply equitably to all contractors. Procurement of milk is made by formal advertising with award made to the low competitive bidder. Hence, an escalation clause would pose problems to which we do not at this point have ready answers. For example, there would be problems in evaluating bids between handlers in regulated areas and handlers in non-regulated areas and in assessing the impact of the marketing order on a particular contract without knowledge of the cost basis for the handler's bid. These problems are compounded by the fact that the price of fluid milk is regulated by over 70 different Federal Milk Marketing Orders and numerous State and local controls. Furthermore, enactment of provisions requiring the inclusion of escalation clauses in milk contracts would establish an undesirable precedent which would tend to undermine the benefits of competitive fixed price contracting. Producers and suppliers of many other commodities susceptible to cost changes could be expected to seek similar legislation. Accordingly, it is recommended that Subsection (a) of the proposed section be deleted with the understanding that the Department of Defense will develop procedures in connection with the procurement of milk within existing administrative authority to avoid situations comparable to that which occurred as a consequence of the recent actions by the Department of Agriculture.

Subsection (b) of the proposed new section would provide relief for those Defense contractors required to pay higher prices to milk producers because of increases in producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture. However, the bill would not provide relief for those contractors required to pay higher prices to producers because of increases in the price of manufacturing milk ordered by the Secretary of Agriculture. In areas not covered by Federal Milk Marketing Orders this increase in the manufacturing milk price could have had an effect on the price paid by Defense contractors to producers for fluid milk for beverage purposes because of its impact on the general market price for milk. In order to provide equitable treatment for all Defense contractors adversely affected by orders of the Secretary of Agriculture in increasing the price of milk, it would be necessary to devise Subsection (b) of the bill to provide for price adjustments on the basis of actions of the Secretary of Agriculture increasing the price of milk without limiting such action to increases in producer prices for fluid milk for beverage purposes.

Regulations would provide that contractors seeking relief under such a provision would be required to show how these actions of the Secretary of Agriculture affected the price they were required to pay.

There is enclosed for your consideration a draft of a bill incorporating the changes recommended above. In addition, a clarifying change is recommended in Subsection (b) (3), line 1, page 3 of the bill. The revised language in the enclosed draft makes clear that an adjustment in the contract price under the bill is not authorized for loss of anticipated profits. Also, the new section should be numbered 2389 instead of 2390 since the last section in Chapter 141, Title 10, is now numbered 2388.

The cost to the Department of Defense of the price adjustments authorized by the bill cannot be ascertained at this time.

Time has not permitted the Department to obtain the views of the Bureau of Budget as to the relationship of the attached report to the administration's program.

Sincerely,

L. NIEDERLEINER,
Acting General Counsel.

A BILL To amend chapter 141 of title 10, United States Code to provide for price adjustments in contracts for the procurement of milk by the Department of Defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 141 of title 10, United States Code, is amended—

(1) By inserting at the end thereof the following new section:

“§ 2389. Contracts for the procurement of milk; price adjustment

“Under regulations prescribed by the Secretary of Defense, any contract for the procurement of fluid milk for beverage purposes which was being performed on or after March 1, 1966, may be amended to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture on or after March 1, 1966, increasing the price of milk. A price adjustment shall not be made unless it has been determined by the Department that—

“(1) such amount is not included in the contract price;

“(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

“(3) the contractor will suffer a loss, not merely a diminution of anticipated profit, under the contract because of such increases in producer prices.”; and

(2) By inserting the following new item in the analysis thereof:

“2389. Contracts for the procurement of milk; price adjustment.”

Mr. BABIONE. I will be happy to respond to any questions the committee may have.

Mr. PRICE. Have you had any speculation or estimate of the possible cost?

Mr. BABIONE. Not at this time, which I feel has any validity, Mr. Chairman.

Mr. PRICE. Do you know how many contracts are involved in this particular situation?

Mr. BABIONE. We, the Defense Supply Agency, had approximately 280 contracts in effect on March 1, 1966, so there would be approximately that number involved.

Now, the armed services also have a number, which would probably run it up to around 375.

Mr. PRICE. The committee has had contact with several contractors, and without objection the correspondence we have received from these contractors will be inserted in the record.

(The correspondence from various milk contractors is as follows:)

CHESTER, S.C., September 17, 1966.

Hon. LUCIUS MENDEL RIVERS,
House Office Building, Washington, D.C.:

The S.C. Dairy Association heartily endorses your bill, H.R. 17483, to provide for price adjustments in Government procurement contracts for milk. Thank you for your efforts in behalf of the milk industry. You may rest assured that we will give this bill our full support.

W. L. ABERNATHY,
Executive Secretary, S.C. Dairy Association.

DENVER, COLO., September 20, 1966.

L. MENDEL RIVERS,
House of Representatives,
Washington, D.C.:

Strongly urge House Committee on Armed Services to hold hearings soon re price adjustments on military contracts covering dairy products in existence prior to March 1. Increased milk producer prices with low margins on military bids create real burden to milk industry. Solicit your support for this measure.

J. G. BRYANT.

NATIONAL DAIRY PRODUCTS CORP.,
New York, N.Y., September 19, 1966.

Hon. L. MENDEL RIVERS,
Chairman of the House Committee on Armed Services,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN RIVERS: The Milk Industry Foundation has reported your introduction of a bill (H.R. 17483) to authorize the Department of Defense to amend milk contracts that were in existence on or after March 1st of this year in order to provide an equitable price adjustment for increased producer prices ordered by the Secretary of Agriculture.

As reported by the Milk Industry Foundation, it is readily apparent that you recognize the inequities that have arisen as a result of the producer price changes directed by the Secretary of Agriculture in order to prevent continued decline in dairy milk production.

I want to express my appreciation for your fairness in submitting this bill for consideration and my hope that you will schedule hearings in the near future so that proper price adjustments can be made for milk dealers who have contracted to supply the Department of Defense.

Sincerely,

LOUIS E. LYNCH,
Vice President.

HARVEY B. HUNTER DAIRIES, INC.,
Charlotte, N.C., September 17, 1966.

Hon. L. MENDEL RIVERS,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN RIVERS: I want to thank you for your introduction of H.R. Bill 17483 to provide for price adjustments in contracts for the procurement of milk by the Department of Defense. My company does not participate in supplying milk to military bases; thus we have no financial interest.

We do feel that in all fairness some relief should be provided the milk plants that have accepted the responsibility to supply milk to the military bases. Governmental agencies (state and federal milk control agencies) on one side have pressed the cost up while there has been no relief on the top side.

Respectfully yours,

CHARLES A. HUNTER,
Executive Vice President.

CONGRESS OF THE UNITED STATES,
 HOUSE OF REPRESENTATIVES,
Washington, D.C., September 19, 1966.

Hon. L. MENDEL RIVERS,
Chairman, House Armed Services Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed is a copy of a letter I have received from Mr. Dennis Kelly of the East Greenwich Dairy Co. This fellow is a very good supporter and friend of mine. I would certainly appreciate anything that can be done to help.

With every best wish, I am,
 Sincerely yours,

JOHN E. FOGARTY,
Member of Congress.

EAST GREENWICH DAIRY CO.,
East Greenwich, R.I., September 15, 1966.

Hon. JOHN E. FOGARTY,
House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE FOGARTY: On February 28, and March 1, 1966, this company submitted bids to the Defense Personnel Support Center at Brooklyn, New York, to supply milk and milk products to the Naval installation at Newport and Quonset Point, Rhode Island, for the period April 1, 1966 thru September 30, 1966.

These bids were opened on the above dates in the order stated. East Greenwich Dairy Company, John V. McGraw, President, was the low bidder at each opening.

On March 1, 1966, approximately five hours after the opening of the Quonset Naval Air Station, the Secretary of Agriculture suspended the Class I pricing formula for the Massachusetts-Rhode Island Milk Marketing Order for the months of April, May and June. This had the effect of setting the price this company pays for raw milk at a higher level than the price we had used in our calculations for bids. The prices we had used in our calculations were based on the best judgment of leading dairy economists and the market administrator for the Massachusetts-Rhode Island Milk Order, Richard D. Aplin.

We immediately protested to the Defense Personnel Support Center at Brooklyn, and subsequently to the Controller General of the United States. Our correspondence between this company and the government agencies involved is enclosed. A review of this correspondence will show that we were unable to secure any relief from any government agencies.

Again in June, 1966, the Secretary of Agriculture took action which further increased the price of raw milk above our estimates. Taken together the actions of the Secretary have deprived this company of approximately \$20,000.00 on these two contracts.

It has been brought to our attention by E. L. Tifton, Economist for the Milk Industry Foundation, Washington, D.C., that the Chairman of the House Armed Services Committee, Representative Rivers, South Carolina, has introduced a bill H.R. 17483, which authorizes amendment of government procurement contracts in existence on or after March 1, 1966, to provide an equitable price adjustment for increased prices paid for raw milk by contractors as a result of increases in producers prices of such milk as ordered by the Secretary of Agriculture.

This bill has been scheduled for hearing by the Armed Services Committee on September 21, 1966.

Our Attorney, Thomas D. Pucci, discussed this matter with Mr. William Lynch, of your office, and at his request we are forwarding the enclosed information and are respectfully requesting that you use your good office on our behalf to secure passage of this legislation.

Very truly yours,

DENNIS W. KELLY, *Manager.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 16, 1966.

Hon. L. MENDEL RIVERS,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing a copy of a letter from one of my constituents for your information.

I agree with Mr. Cassmeyer's thinking on this bill, and I join him in requesting that your Committee holding hearings on it as soon as possible.

I will greatly appreciate your advising me of the status of this legislation.

Sincerely,

JAMES H. QUILLEN.

PET MILK Co.,
September 14, 1966.

Hon. JAMES H. QUILLEN,
House of Representatives,
Washington, D.C.

DEAR MR. QUILLEN: Recently, Representative L. Mendel Rivers of North Carolina has introduced a bill (H.R. 17483) which would authorize the Department of Defense to amend milk contracts that were in existence on or after March 1 of this year to provide an equitable price adjustment for the increased costs of milk ordered by the Secretary of Agriculture.

We are not quarreling with the action of the Secretary of Agriculture except that the action was too long delayed. Certainly the dairy farmers, in view of present day costs, were entitled to more money for their product. We do think, however, that this legislation introduced by Mr. Rivers is necessary. It should not only be applicable to the Department of Defense but should extend to and include the Veterans Administration and other branches of the government that will not accept bids containing an escalation clause due to increase in cost of raw materials.

Frankly, Congressman, for the past two years we have been the low bidder to furnish milk for the dining halls at the local Veterans Administration and were in a position of loss during the last months of the 1965-66 contract, and since we placed our bid for the current year, we presently find ourselves paying 80¢ per hundredweight more for milk than we were when costs were computed. I'm sure you are very much aware that this type of business is bid extremely close and therefore legislation is needed to protect the processors.

Please request the chairman of the House Committee on Armed Services to hold hearings soon and we respectfully ask that you give whole-hearted support to this measure when it is reported out.

Yours very truly,

L. H. CASSMEYER, *Controller.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 14, 1966.

CHAIRMAN,
Subcommittee No. 3.
House Armed Services Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing herewith, a copy of the letter that I have just received from Mr. Fred Atkinson, President of the Ideal Pure Milk Company, Inc., giving his views in regard to H.R. 17483.

I would appreciate it if this is given your consideration and made a part of the hearings which are to be held.

With kindest regards, I am

Sincerely yours,

WINFIELD K. DENTON,
Member of Congress.

IDEAL PURE MILK CO., INC.,
Evansville, Ind., September 12, 1966.

Re H.R. 17483.

Congressman WINFIELD K. DENTON,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN DENTON: The above referred bill which I understand was introduced on September 1, 1966, is to amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

For the past twenty-five years, our company has been actively engaged in supplying dairy products to various armed forces installations including Fort Campbell, Fort Knox, Camp Breckenridge and Fort Benjamin Harrison. At one time or another, we have supplied fresh fluid milk or ice cream or both to these installations. At times, the Defense Department has requested periods for bids of six months to twelve months. This has usually required substantial risk beyond our ability to project likely fluid milk costs. During the years when our company was not regulated by a Federal Milk Order, we were able to negotiate such arrangements with our farmers' marketing cooperative for the establishment of firm pricing to us by them. This opportunity was eliminated when we came under the Federal Milk Order.

During the past several months since substantial Class I price increases have been ordered by the Secretary of Agriculture (and with very little notice if any), a bidder has had only one course to follow and that is to calculate bids sufficiently high to try to offset the unreasonable burden and risk.

Inasmuch as the Department of Agriculture's power to adjust prices paid for raw milk is completely binding, it seems to us that some provision for escalation adjustments should be provided when defense contracts are let. This should tend in the long run to permit the Defense Department to buy its needs at prices with reasonable margins and, therefore, with probable savings in expenditures.

We would appreciate your interest in requesting the Chairman of the House Committee on Armed Forces to hold hearings and we solicit your support of the measure when it is reported out.

Sincerely yours,

W. FRED ATKINSON, President.

SHREVEPORT, LA., September 21, 1966.

Hon. MENDEL RIVERS,
Chairman, House Armed Services Committee,
Washington, D.C.:

Certainly appreciate your introducing H.R. 17483 giving relief to small dairies who bid on Government contracts in good faith, then had Agriculture Department raise price of milk. Believe part 3 should be changed to pay us just what Agriculture Department increased the cost to us. This would save time and bookkeeping.

GLENN DUMIRE LYNN'S DAIRY PRODUCTS INC.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 22, 1966.

Hon. MELVIN PRICE,
Chairman, Subcommittee No. 3,
Committee on Armed Services,
Rayburn House Office Building.

DEAR MR. CHAIRMAN: I am writing in behalf of H.R. 17500, a bill to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

This legislation is of particular interest to Shamrock Dairy, Inc. of Tucson, Arizona, which seeks relief under its contract to supply milk to Davis-Monthan Air Force Base in Tucson. Shamrock is one of those dairies whose plight is

ably explained in your opening statement to the Subcommittee on September 21.

I want to associate myself with the testimony offered in favor of this proposed legislation by my colleagues on Wednesday. Inadvertently, I missed the opportunity to appear in person before your subcommittee and for this I apologize.

Sincerely,

MORRIS K. UDALL.

JUNCTION CITY, KANS., September 24, 1966.

Representative L. MENDEL RIVERS,
House Office Building,
Washington, D.C.:

We appreciate your bill and seriously need help offered under DR-Sept 7 for contracts negotiated April 1965 and April 1966.

E. D. JACKSON,
Weside Dairy Inc., Junction City, Kans.

Mr. PRICE. Any further questions of the Defense Department witnesses?

Mr. HALL. I am real interested in the last statement that Mr. Babione made.

Do I understand that the Defense Supply Agency, Procurement Branch or Division, or whatever it is, Procurement and Production of Defense Supply Agency, is making separate contracts from those of the services, Army, Air Force, Navy and Marine?

Mr. BABIONE. The present situation is that the services have an option to either request the Defense Supply Agency to make the contract for the procurement of milk at bases or they may do it themselves. The result has been that out of approximately 370 to 375 contracts in being at any one time, approximately 280 are procured via DSA.

Mr. HALL. Is it your plan as head of this division to eventually gather them all under DSA?

Mr. BABIONE. Not necessarily. It is strictly a matter of choice with the services. In some situations they prefer to handle it because of local conditions of some type. In other cases they feel we do a better job than they do. It is strictly voluntary and there is no attempt on our part to procure all the milk under contracts for the Department of Defense.

Mr. HALL. How much of a problem do you have—let's presume for the moment that since you are procuring the greatest portion of the milk, as I understand it some 280 out of 370-and-some contracts—let's just assume that you are doing the bulk of it or are the chief procurer. [Laughter.]

That is more applicable to the Department of Defense than you might think.

But for my hypothetical question, let's presume it, that you are the responsible action agency for procurement of milk. I would like to have you expand on the problem of procurement of all supplies, not just milk, but all food supplies, posted with interaction with other Cabinet branches?

Mr. BABIONE. I assume that that is in the context of adversely affecting the price that it may cost the contractor to perform under a contract?

Mr. HALL. Well, yes, but primarily, Mr. Babione, what this committee is interested in is primarily in the interest of seeing that the best possible nutriment gets to our serviceman. In other words, the

consumer in your case is your serviceman, and we are vitally interested in seeing that he has enough food to give him verve and enthusiasm in defending the Nation. That is the objective of this committee.

Mr. BABIONE. Yes, sir.

As a general statement we don't have much of a problem in the procurement of subsistence at Defense Supply Agency, which annually runs about \$1,200 million. Our performance in that area over the period of escalation during the past year has been very good, and we haven't had many problems in the procurement of food, other than the one that the subcommittee is now looking into; namely, procurement of milk.

Mr. HALL. You don't consider the problem, when the Secretary of Agriculture wrote the "Dear Bob" letter to the Secretary of Defense to quit buying pork chops and use hamburger instead, as later revealed, by the Vice President, after an early Saturday morning conference, to be interfering with your procurement problems in supplying of adequate nutrition to the troops?

Mr. BABIONE. The policy of buying substitutes based on fluctuations of the market such as margarine in lieu of butter, cherries in lieu of peaches, depending on the market fluctuation at any given time, I don't consider a major problem.

The nutrient value that the troops receive is still included in whatever substitute is available as a general proposition. And there are many substitutes that are available.

Mr. HALL. Well, that is a good answer, and about the kind that I would expect to that question.

But how do you coordinate this thing? Do you ask for help from the Research Service of the Department of Agriculture predicated on such a matter?

Mr. BABIONE. The services themselves have the responsibility for what they consume as far as generating the requirement. We do not determine, for example, whether they will eat peaches, canned, number so and so, versus dry peaches, versus apples, versus cherries, versus fruit cocktail. The services themselves, through the master menu board and other agencies jointly determine what they will consume. They determine the requirement, and we buy against whatever their requirement is.

Now, from time to time when certain commodities prices rise, we make the services aware of this and the determination is subsequently made by them whether substitutes should be bought that are not quite as expensive.

But at no time to my knowledge has the nutrient value been lowered because of such substitutes.

Mr. HALL. You don't think there is any difference between the nutritional value of butter, a dairy product, and margarine, a cottonseed product, then—and by "nutriment" I presume we are talking about vitamins as well as minerals, as well as fats as well as milk and whey and everything else that is involved therein?

Mr. BABIONE. Well, I would say that I would have to defer to the people who sit on the master menu board who have to make the trade-off decisions as to total nutriment value fed to troops. They make such

judgments as to what values are included or not included. We would merely procure against what they indicate to us is their actual need.

Mr. HALL. You are simply an action agency for procurement?

Mr. BABIONE. Yes, sir.

Mr. HALL. And you do not influence or appoint or the same secretary that appoints you does not appoint the master menu board?

Mr. BABIONE. That is right.

The master menu board is composed of representatives of the services, which are the customers.

Mr. HALL. So what you are saying is that you have the majority of procurement but you let them determine the menus, which includes a determination of nutrition, and that unless they make this coordination with Research and Marketing Service of Agriculture, you don't know anything about it or pay attention to it; is that a correct statement?

Mr. BABIONE. We do try and keep informed as to all the possible information that is involved and coordinate with all the people such as Agriculture. We do talk with Agriculture. I don't want to leave the impression that we are not knowledgeable of what is going on. When we substitute margarine for butter we are aware of it, the service customers are aware of it, and all the Government agencies involved in it are aware of it. But we do not make the decision of what will be substituted for it. We only advise the customer as to what possibilities are available to him.

Mr. HALL. What about the politics involved between a cottonseed grower from South Carolina and a milk producer from Missouri? Do you take those things into consideration in procuring margarine or natural butter?

Mr. BABIONE. I would say that is not in the sphere of my competence to answer. You would know more about that maybe than I would, Congressman.

Mr. STAFFORD. If the gentleman will yield, under those circumstances they turn to a New England dairy producer.

Mr. HALL. Of course if you can make butter out of "Blue John," that is probably all right. But I hope as the chief procurer for the Department of Defense, you know the difference.

So that general statement that you make, that you are knowledgeable about supply and demand and cause and effect, would include the "Dear Bob" letter that I referred to once before?

Mr. BABIONE. Yes, sir; I am familiar with it.

Mr. HALL. What about the amendment to section (b), subsection (b)? How vital do you think that is from your point of view of contractual procurement?

Mr. BABIONE. We suggested the amendment on the basis of equitable treatment because, as we interpret the current bill, we would not be permitted to grant relief to those who could be adversely affected, but are not in a regulated area or are adversely affected by increases in manufacturing milk which according to our interpretation the bill would not cover.

Mr. HALL. Do you concur with Mr. Welch from the Comptroller General's Office that there should be such a thing as a well-earned and honest profit, but that you can't anticipate this after the fact, and would have to handle it by future contractual relations?

Mr. BABIONE. Our position is that in granting relief after the fact, the Government's responsibility is limited to compensating a contractor for his losses and not for guaranteeing him a profit.

In fact this has been a policy of the Department of Defense for a long time, and it is consistent with what we do in granting relief under other administrative actions, in cases of similar circumstances.

Mr. HALL. Thank you, Mr. Chairman.

Mr. PRICE. Governor Stafford?

Mr. STAFFORD. I have no serious question, but I was intrigued by the testimony with reference to the menu board.

Having twice served in the Armed Forces myself, I wondered if the membership of the menu board was kept anonymous and if they met in a safe and secret place?

I don't expect an answer to that. [Laughter.]

Mr. BABIONE. I assume that was a rhetorical question.

Mr. PRICE. Mr. Hicks.

Mr. HICKS. There is no more difficult—well, there isn't insuperable difficulty in any way, is there, if this bill were written to make an equitable adjustment to determine, in going back and looking at this dairy's contract in the beginning, what the profit would have been, if that were put in the bill, is there?

Mr. BABIONE. I think that determining what a contractor's profit objective was prior to entering into a contract or reconstructing it after the fact would be difficult.

However, my opposition to granting such relief is not based primarily on that problem. It would be primarily based on the policy of the Department of Defense that the responsibility is only to include losses suffered and that it has been a policy followed consistently over the years, and in granting relief in other type situations. Under other provisions we have limited such relief to actual losses, and have not included diminution of profit.

Mr. HICKS. And my question would be the same as to Mr. Welch:

If you start out with that concept, in your experience is the person trying to recoup his losses, is he ever made whole? Does he ever get all his losses back when the Government starts with that concept?

Mr. BABIONE. I don't think you can talk in generalities. I used to sit on the Air Force Contract Adjustment Board, and in the cases I participated in, I could say "Yes." There are all types of situations and people have different and varying opinions as to what constitutes, to use your term, making him well, or making him whole on all his losses.

I think reasonable people would disagree as to where that point is. So I don't believe I can answer it in a general sense.

Mr. HICKS. Thank you very much.

I have no further questions.

Mr. PRICE. Mr. Love.

Mr. LOVE. Mr. Babione, you were here I think when Mr. Welch testified, were you not?

Mr. BABIONE. Yes, sir.

Mr. LOVE. He did not seem to have any particular objection to paragraph (a) of the bill.

I think, as I recall his testimony, he suggested adding a word in line 4, page 2, before "increases", the word "abnormal".

If this were done, does the Department still have objections to the first paragraph of the bill?

Mr. BABIONE. The problem is in determining what "abnormal" is, No. 1.

The second problem is in determining how to equitably apply it. If you had a contractor that was not in a federally controlled area, market area, and he bid a straight fixed price, say, of 40 cents a half-gallon, and another one bid 39 cents in a controlled area, you would be forced to make a judgment as to whether the price would go up or down to determine who the low bidder is. This would cause a real problem.

The problem is to seek some common index to escalate from.

Now, if you escalate artificially and would require somebody in a nonregulated area to escalate their contract, you get into the problem, even if the Federal milk marketing order were raised a cent or 2 cents, and where the actual price bid was at a higher rate than that, and he wasn't even affected, would you want to give an increase under those conditions.

So these are things we would like to explore in a little more depth as to how we solve these problems.

Mr. LOVE. Well, does the language suggested by Mr. Sullivan in line 6, after the word "Agriculture," help any?

He suggested adding "by amendment of a milk marketing order or by suspension or termination of a provision of such an order."

Mr. BABIONE. But that doesn't help the problem of the bidder who is in a nonregulated area.

Mr. LOVE. Well, does the language in the beginning of section (a), which says "Under regulations prescribed by the Secretary of Defense"—would that help the situation any? In other words, this section which you are suggesting that we strike out, and only use adjusted language for paragraph (b) under a new section known as 2389, which is the way I understand it—the first provision here requires the Department of Defense to use the clause in a contract, and your testimony merely suggests that perhaps you will do so.

In other words, we are liable to get in the same situation that we are in now in the future with some kind of contracts if we leave it purely and simply up to the Department of Defense's discretion to look into this problem.

Mr. BABIONE. Well, what we meant to say, if we haven't made it clear, is that we will take action that will assure corrections of the current problem.

Whether the optimum solution is escalation, we are not prepared to say at this time.

There are other solutions, which we mentioned in our statement, such as short-term contracts. Maybe an option clause, that we would only execute in the event that there has been no increases by a Federal marketing order, and so on.

The problems with escalation clauses that I have just indicated are with us, regardless of whether we do it under our regulation or a law. And we are just not in a position today to be able to solve all the problems that we foresee that are inherent in the escalation solution, Mr. Congressman.

Mr. LOVE. Well, do you interpret the language which the original bill here provides, for increased or decreased prices paid by a contractor for such milk as a result of, and then adding the word "abnormal," increases or decreases, as requiring the Department to include an escalation clause in the future contracts?

Do you think this language requires you to work out an escalation clause of some sort?

Mr. BABIONE. Yes, sir.

Mr. LOVE. Is that what you are saying?

Mr. BABIONE. Yes, sir.

Mr. LOVE. In other words, that language—the wording of the language requires an escalation clause and you are saying that there are other ways of doing this; is that it?

Mr. BABIONE. Yes, sir.

Mr. LOVE. That might be better than an escalation clause?

Mr. BABIONE. Yes, sir.

Mr. LOVE. Now, did I get—could I ask the question once more about Mr. Sullivan's suggestion and your interpretation of that language which he suggested, "by amendment of a milk marketing order or by suspension or termination of a provision of such order," that language being included after the word "Secretary of Agriculture" in line 6—have you any comment about that?

Mr. BABIONE. Well, that helps to better distinguish what is causing the problem of abnormal versus normal, I think is why Agriculture used the term, but it still leaves us with the problem of nonregulated versus regulated, though.

Mr. LOVE. It doesn't change your answer as to the section itself?

Mr. BABIONE. No, sir.

Mr. LOVE. All right. I think that is all I have.

Mr. PRICE. Mr. Babione, I interpret your testimony that the Department of Defense is not only sympathetic or supports the objective of this legislation that we are considering here today and possibly better in the revised language the Department has submitted, but it supports the overall objective of meeting the method problem.

(Mr. Babione nods.)

Mr. PRICE. And do I also gather from this an assurance from the Department of Defense that they will continue to explore this problem and try to work out a solution that would not require additional legislation to solve a similar problem?

Mr. BABIONE. That is correct, Mr. Chairman.

Mr. PRICE. And you are going to try to develop a contractual procedure that might avoid a problem like this in the future?

Mr. BABIONE. Yes, sir.

Mr. PRICE. And give the Department authority by contract to make adjustment when situations like this occur.

Mr. BABIONE. In some fashion, if that is the optimum solution; yes, sir.

Mr. PRICE. Now, do you feel that the language which is as submitted by the Department of Defense meets all the objectives of H.R. 17500 and in some ways even goes beyond it by protecting contractors who are in nonregulated areas?

Mr. BABIONE. Yes, sir; I believe it meets all the objectives. As to whether it goes beyond it, I am not sure. Now, in our thinking, in

order to be equitable to everyone, for those dairies we thought were affected by it, adversely, directly or indirectly, we would suggest the expansion to language we submitted.

Mr. PRICE. Well, under the present language of H.R. 17500, you would not now be able to meet all situations, is that correct?

Mr. BABIONE. That is correct, sir. We have some situations where contractors have lost money and are not in a federally regulated area and as we interpret the present bill without amendment, we would not be able to grant those people relief, then.

Mr. MORGAN. Mr. Babione, are you familiar with the Sumter Dairy complaint?

Mr. BABIONE. Yes, sir.

Mr. MORGAN. The legislation you propose would take care of their problem, whereas the bill 17500 would not, is that correct?

Mr. BABIONE. That is my understanding.

Mr. PRICE. Mr. Morgan, go ahead.

Mr. MORGAN. When could the Congress expect these new procedures to be developed, if we go along with the desires and suggestions of the Department of Defense?

Mr. BABIONE. Six months.

Mr. MORGAN. What would—

Mr. BABIONE. One thing I think we should keep in mind. Effective as of the 5th of August, we sent a wire to all our procuring activities and instructed them not to make any future milk contracts for a period greater than 3 months.

Mr. MORGAN. What did the military departments do? Have they done similar?

Mr. BABIONE. Not to my knowledge at this time. But we are contacting them. So far the contracts that Defense Supply Agency has responsibility for, we have made an immediate correction, until we can devise the optimum solution to the problem, and I think that that will go a long way toward helping alleviate the current situation. And we have also sent a letter to Agriculture asking them to make us aware of future changes so that we could suspend any bid openings during a period when a change was being considered and give the bidders chances to change their bids until after the increase or decrease is known to all the bidding parties.

Mr. PRICE. Thank you very much, Mr. Babione.

Mr. MORGAN. Just one further question.

Mr. PRICE. Mr. Morgan has one more question.

Mr. MORGAN. Mr. Babione, the Department of Defense or DSA would have no problem in interrupting the congressional intent of the language in the bill that you now propose, would it?

Mr. BABIONE. No, sir.

Mr. PRICE. Thank you very much.

Mr. BABIONE. Thank you.

Mr. PRICE. Mr. Sullivan, I wonder if you have had an opportunity to look at the proposed revised language and if you could comment on it.

Mr. SULLIVAN. I did have a chance to look at it here the past few minutes.

The thing that is important or that strikes me is the term, the language "as a result of action by the Secretary of Agriculture on and after March 1."

I should say at the outset, of course, the Department of Agriculture has no objection either to this bill, the intention of this bill or of any other bill which would result in repairing the damage that may have happened because of these price changes either as ordered by the Secretary or otherwise. We have no objection to repairing whatever damage may have been done.

But as a practical matter, I, myself, would not in the case of those milk handlers who are not regulated by a Federal order, what damage they suffered "as a result of the action by the Secretary of Agriculture on and after March 1."

Mr. PRICE. Mr. Morgan.

Mr. MORGAN. Mr. Sullivan, this is not a determination that you have to make.

Mr. SULLIVAN. That is right.

Mr. MORGAN. This bill does not apply to the Department of Agriculture. It doesn't tell the Department of Agriculture to do a thing. This bill is directed to the Department of Defense.

Mr. SULLIVAN. Yes, sir.

Mr. MORGAN. And it would be up to them to make that determination. Would you have any trouble, Mr. Babione, in making such a determination?

Mr. BABIONE. I am sorry, I didn't hear the preceding comment. Would you mind restating it?

Mr. MORGAN. Mr. Sullivan indicated that he would have difficulty in determining the losses as a result of the action—was that it, Mr. Sullivan?

Mr. SULLIVAN. Yes. The words are "as a result of the action by the Secretary of Agriculture on and after March 1, 1966."

Mr. PRICE. I think you explained more fully what you said, that you would have trouble determining. This was the increases to non-regulated areas as a result of the action of the Secretary.

Mr. SULLIVAN. Yes, sir.

Mr. PRICE. Mr. Babione, would you have trouble making an interpretation in that regard?

Mr. BABIONE. Well, it is very difficult to answer that in a general view. I would suspect that there would be some difficulty, but I think it would be difficulty well worth undertaking in view of the equity involved to all the parties.

Mr. MORGAN. Isn't it true that the burden of proof still remains with the contractor?

Mr. BABIONE. That is correct.

Mr. PRICE. Governor Stafford?

Mr. STAFFORD. If I understand correctly, then—if I could address this question to Mr. Babione.

You believe you could make the bill work to take care of the situations that have developed, is that right?

Mr. BABIONE. Yes, sir. I believe that the contractor should be afforded the opportunity to demonstrate the relationship.

Mr. STAFFORD. Whether or not they are in a milk marketing order area?

Mr. BABIONE. Yes, recognizing that it will be difficult.

Mr. STAFFORD. Thank you.

Mr. PRICE. Mr. Love?

Mr. LOVE. Mr. Sullivan, by your statement there are you suggesting that you would have been better satisfied if the bill, if you had to interpret it, if the language which you suggested in your statement "by amendment of a milk marketing order termination of a provision of such an order" went in this language, too?

Is that what you are saying?

Mr. SULLIVAN. Well, we think it is readily and accurately determined what the effects were under the milk marketing orders. We know, or it can be ascertained practically and quite precisely what those effects were. But these indirect and collateral effects in other areas—we don't know how you could tell what the effect was that is attributable to the action of the Secretary.

Mr. LOVE. All right. Thank you, Mr. Sullivan.

Mr. PRICE. The committee will go into executive session. So all those who are not in direct contact—

Mr. MORGAN. (aside.)

Mr. PRICE. I wonder if the GAO representative has any further comment after hearing the testimony of the Department of Defense?

Mr. Welch?

Mr. WELCH. I might make one brief comment. The proposal by Defense to substitute in lieu of this legislation appropriate administrative regulations would certainly be an acceptable alternative, I would think. As I said, there would be no legal or contractual objection to this because I don't believe legislation is needed to take care of the problem. I think it can be done by appropriate contract provisions as implemented by administrative regulations.

Mr. PRICE. Thank you very much, Mr. Welch.

Now, the committee will go into executive session.

(The following material was received for the record :)

STATEMENT OF HON. RICHARD C. WHITE, TEXAS

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to express my support of H.R. 17500, legislation to resolve the financial hardship experienced by milk companies contracting with the Department of Defense. Present milk contracting procedures make no allowance for government orders increasing base milk prices after procurement contracts for milk are negotiated by the Department of Defense.

Orders by the Secretary of Agriculture increasing the producers' price of milk have caused contractors to sustain considerable losses, above a loss of profits, on their sales to the government. Losses to certain milk companies have been so substantial as to create a loss on total company operations.

Mr. Chairman, I submit for the consideration of the members of this Committee and for the record correspondence I have received from El Paso, Texas milk companies, outlining sizable losses sustained as a result of contracting with military installations, under present procedures. The examples of Price's Creameries, Farmers Dairies, the Borden Company and Wholesome Dairy have been repeated many times with other milk companies throughout the country.

The members of this Committee and the Congress, I know do not wish to place undue burdens on private businesses. I believe it untenable to ask these milk firms to sustain such losses as a result of government actions, which the contractors cannot anticipate.

The legislation you are considering today will remedy the inequities of present contracting procedures for private business. In addition this proposal will serve the best interests of the federal government and our desire for government economy. A contractor forced to bid on the present inadjustable basis, must include in his bid a cost figure to the Department of Defense for a possible price increase resulting from a Department of Agriculture marketing order. The cost to the

Department of Defense for such necessary protection to the businessman will total more than the cost of the present legislation.

In the best interests of all affected parties, I respectfully urge your approval of H.R. 17500.

Thank you.

EL PASO, TEX., September 22, 1966.

Hon. RICHARD C. WHITE,
House of Representatives,
Washington, D.C.:

Request your assistance on drastic price increase created by Federal marketing orders. That portion sold to military contracts entered prior to the drastic increase on six months to one year contracts. Cost of milk May 1965 was \$5.16 cut versus cost September 1966 \$6.49 cwt. Any relief afforded us on Government contracts will be appreciated.

BERNARD SCHOICHET,
WHOLESOME DAIRY, INC.,
Vice President General Manager.

EL PASO, TEX., September 22, 1966.

Hon. RICHARD C. WHITE,
House Office Building,
Washington, D.C.

HONORABLE SIR: In response to your request we would like to advise that estimated losses on deliveries to Army installation caused by increased milk prices are as follows:

White Sands Missile Range Contract No. IFB DSA 132-66-6 for the period 25 September 1965 thru 24 May 1966 are:

March 1966-----	\$889. 98
April 1966-----	1, 031. 40
May 1966-----	719. 34
Total -----	2, 640. 72

Further estimated losses on deliveries to Ft. Bliss per contract FTW 3245-66 for period 1 July, 1966, thru 24 December 1966, are anticipated by months as follows:

July 1966-----	\$10, 472. 80
August 1966-----	12, 005. 69
September 1966-----	13, 351. 19
October 1966-----	15, 484. 18
November 1966-----	14, 346. 35
December 1966-----	10, 697. 67
Total -----	76, 357. 88

And total of the two military installations amounts to \$78,998.60.

Urge that you vote favorably on H.R. 17500 and appreciate your interest and research for dairy products processors. The emergency price increase to dairy farmers was most certainly justified in our opinion, however you can see the impact on milk and ice cream processors delivering to military installations on contract basis.

Respectfully,

GORDON LESTER,
Manager, Borden Co.

EL PASO, TEX., September 22, 1966.

Hon. RICHARD WHITE,
House of Representatives,
Washington, D.C.:

On May 9 we entered contract No. DSA 132-4333 for estimated value of \$750,000 to supply Fort Bliss with milk and milk products for second half of 1966. We based bid on normal trends of the market. The Department of Agriculture has established prices on the raw milk, which greatly deviate from the normal

trends, thus imposing an unbearable loss on our business for having contracted to supply the U.S. Army. In November 1965 Department of Agriculture established milk prices for 1966. In June we sold 2,314,027 pounds milk. The Department established for that month a price \$0.15 per hundredweight higher than that established by them previously, thus causing us a loss of \$3,471.40. In July we sold 1,107,035 pounds. The unpredicted difference between the established and the effective July price was \$0.43 per hundredweight higher, causing loss of \$4,760.25. In August sold 1,472,404 pounds. Unpredicted increase was \$0.70. Our loss was \$10,307.03, similar loss of profits are being suffered in the supply of cream, cheese, etc. With present trends greater losses will be suffered during months remaining, possibly incapacitating or deterring us from accepting future invitations to bid Army contracts. We request your assistance in obtaining restitution for losses imposes on us by these actions.

Jos. A. NAVAR,
Manager, Farmers Dairies.

(Whereupon at 11:52 a.m., the committee went into executive session. The reporter was directed to include the executive session proceedings into the public record.)

Mr. PRICE. The committee will be in order.

I think the committee is thoroughly familiar with this piece of legislation now. Everyone has had a copy in front of him of the revised language submitted by the Department of Defense. The Chair will entertain a motion.

Mr. LOVE. May I make this motion, having introduced a similar bill. I move that we amend the bill 17500 by striking everything after the enacting clause and substituting this language. You don't want me to read it, do you, the language proposed by the Department of Defense.

Mr. PRICE. No, we have the language in front of us.

Mr. LOVE. The language proposed by the Department of Defense, which relates to a new section, 2389.

Mr. PRICE. Is there objection?

(No response.)

Mr. PRICE. The Chair hears none and the motion is agreed to.

Now, the Chair will entertain a motion on the approval of the bill.

Mr. STAFFORD. Mr. Chairman—

Mr. PRICE. As amended.

Mr. STAFFORD. I move the bill, as amended, be approved and reported to the full committee.

Mr. PRICE. Without objection, it is so ordered.

Mr. HALL. Mr. Chairman, let me just say that I do think it is mighty important that we have a bill.

Mr. PRICE. Yes. I think we had a good hearing on it.

Mr. PRICE. Yes, excellent.

(Chorus of "Yes.")

(Whereupon, at 11:54 a.m., the hearing was adjourned.)



H.R. 17500

DIGEST OF PUBLIC LAW 89-696

PRICE ADJUSTMENTS IN CONTRACTS FOR PROCUREMENT OF MILK. Permits the Secretary of Defense to amend contracts entered into on or after March 1, 1966, for the procurement of fluid milk for beverage purposes to provide price adjustments for losses incurred by contractors because of increased prices paid to producers as a result of modification of milk marketing orders by the Department of Agriculture.

89TH CONGRESS
2D SESSION

H. R. 17500

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 1, 1966

Mr. EVANS of Colorado introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 That chapter 141 of title 10, United States Code, is

4 amended—

5 (1) by inserting at the end thereof the following

6 new section:

7 **“§ 2390. Contracts for the procurement of milk; price**

8 **adjustment**

9 “(a) Under regulations prescribed by the Secretary of

10 Defense a contract of the Department of Defense for the pro-

1 curement of milk where the period of performance exceeds
2 ninety days shall include a provision for an equitable price
3 adjustment for increased or decreased prices paid by a con-
4 tractor for such milk as a result of increases or decreases in
5 the producer price of fluid milk for beverage purposes ordered
6 by the Secretary of Agriculture after the date of bid opening
7 in a formally advertised procurement or the date of the con-
8 tract in a negotiated procurement.

9 “(b) Under regulations prescribed by the Secretary
10 of Defense, any contract for the procurement of milk which
11 was being performed on or after March 1, 1966, may be
12 amended to provide an equitable price adjustment for in-
13 creased prices paid by a contractor for such milk as a result
14 of increases in the producer prices of fluid milk for beverage
15 purposes ordered by the Secretary of Agriculture on or after
16 March 1, 1966. A price adjustment shall not be made un-
17 less it has been determined by the Department that—

18 “(1) such amount was not included in the contract
19 price; .

20 “(2) the contract does not otherwise contain a
21 provision providing for an adjustment in price; and

1 “(3) the contractor will suffer a loss under the con-
2 tract because of such increases in producer prices.”

3 (2) by inserting the following new item in the
4 analysis thereof:

“2390. Contracts for the procurement of milk; price adjustment.”

89TH CONGRESS
2d SESSION

H. R. 17500

A BILL

To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

By Mr. EVANS of Colorado

SEPTEMBER 1, 1966

Referred to the Committee on Armed Services

89TH CONGRESS
2D SESSION

S. 3834

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14 (legislative day, SEPTEMBER 7), 1966

Mr. ALLOTT (for himself and Mr. DOMINICK) introduced the following bill;
which was read twice and referred to the Committee on Armed Services

A BILL

To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 141 of title 10, United States Code, is
4 amended—

5 (1) by inserting at the end thereof the following
6 new section:

7 **“§ 2390. Contracts for the procurement of milk; price
8 adjustment**

9 “(a) Under regulations prescribed by the Secretary of
10 Defense a contract of the Department of Defense for the

1 procurement of milk where the period of performance ex-
2 ceeds ninety days shall include a provision for an equitable
3 price adjustment for increased or decreased prices paid by
4 a contractor for such milk as a result of increases or decreases
5 in the producer price of fluid milk for beverage purposes
6 ordered by the Secretary of Agriculture after the date of
7 bid opening in a formally advertised procurement or the
8 date of the contract in a negotiated procurement.

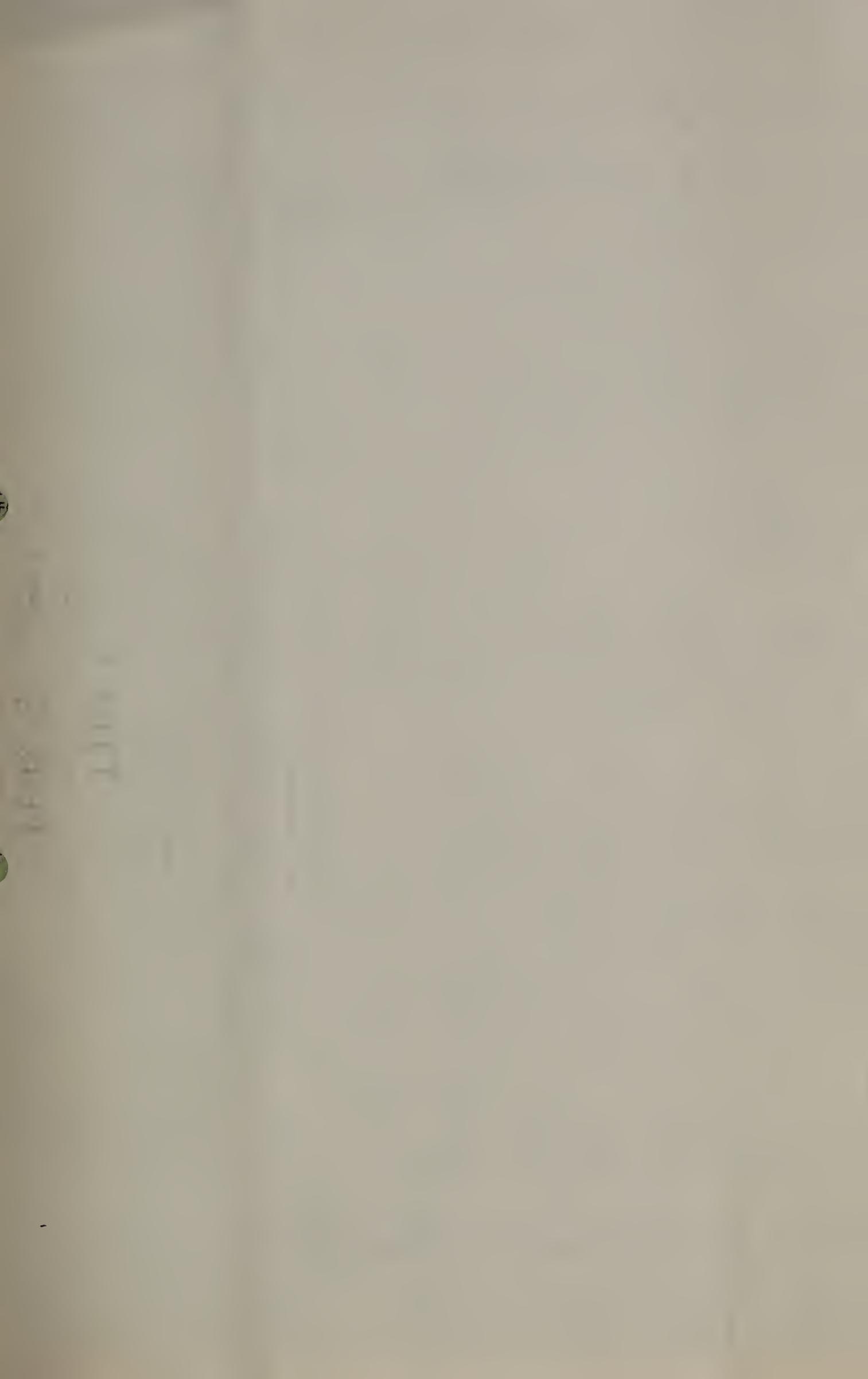
9 “(b) Under regulations prescribed by the Secretary of
10 Defense, any contract for the procurement of milk which was
11 being performed on or after March 1, 1966, may be
12 amended to provide an equitable price adjustment for in-
13 creased prices paid by a contractor for such milk as a result
14 of increases in the producer prices of fluid milk for beverage
15 purposes ordered by the Secretary of Agriculture on or
16 after March 1, 1966. A price adjustment shall not be made
17 unless it has been determined by the Department that—

18 “(1) such amount was not included in the contract
19 price;

20 “(2) the contract does not otherwise contain a pro-
21 vision providing for an adjustment in price; and

22 “(3) the contractor will suffer a loss under the
23 contract because of such increases in producer prices.”

24 (2) by inserting the following new item in the
25 analysis thereof:



A BILL

To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

By Mr. ALLOTT and Mr. DOMINICK

SEPTEMBER 14 (legislative day, SEPTEMBER 7), 1966
Read twice and referred to the Committee on Armed Services

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C. 20250
OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U. S. DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

Issued Sept. 23, 1966
For actions of Sept. 22, 1966
89th-2nd; No. 161

CONTENTS

Adjournment.....	15, 30	Farm labor.....	40	Poverty.....	14, 36
Appropriations.....	2, 22	Farm prices.....	33	Recreation.....	20, 42
Banking.....	24	Flood control.....	23	Reorganization.....	35
Buildings.....	11	Food for India.....	38	Research.....	21, 42
Child nutrition.....	7	Food stamps.....	36	Sea-grant colleges.....	10
Congressional..... accomplishments.....	37	Intergovernmental..... relations.....	19	Seed.....	4
Corn.....	8, 28, 34	Legislative program.....	29	Supergrades.....	11
Demonstration cities....	26	Loans.....	3	Tariffs.....	9
Disaster relief.....	18, 41	Milk prices.....	16	Taxation.....	5, 27
Expenditures.....	6, 32	Packaging and labeling.....	17	Transportation.....	13
Exposition.....	12	Personnel.....	1, 6	Water pollution...	25, 31, 39
				Water supply.....	3

HIGHLIGHTS: Senate agreed to conference report on bill to authorize additional supergrade positions. Senate committee reported bills to revise Seed Act and authorize holding of prepayments on FHA loans. Senate committees voted to report poverty and Transportation Dept. bills. House subcommittee approved bill providing adjustment of Defense milk contracts when USDA orders prices raised. House committees voted to report packaging and labeling and disaster relief bills.

SENATE

1. SUPERGRADES. Agreed to the conference report on S. 2393, to authorize 300 additional positions at GS-16, 17, and 18. This bill will now be sent to the President. pp. 22693-4
2. LABOR-HEW APPROPRIATION BILL. The Appropriations Committee reported with amendments this bill, H. R. 14745, which is to be debated Mon. (S. Rept. 1631). p. 22676

3. LOANS. The Agriculture and Forestry Committee reported without amendment H. R. 15510, to authorize the Department to hold prepayments made by insured-loan borrowers and transmit them to the holders of the notes in installments as they become due (S. Rept. 1633). p. 22676
Sen. Eastland commended the program for FHA loans and grants for water supply and waste disposal. p. 22707
4. SEED. The Agriculture and Forestry Committee reported with amendments H. R. 15662, to revise the Federal Seed Act (S. Rept. 1632). p. 22676
5. TAXATION. Sen. Proxmire claimed the proposed investment-credit suspension would take \$100 million annually out of the pockets of farmers. p. 22690
6. PERSONNEL; EXPENDITURES. Sen. Williams, Del., criticized "excessive" Federal employment and said the freeze at present levels is an "insult to the intelligence of ...taxpayers." pp. 22696-7
7. CHILD NUTRITION. Sen. Proxmire commended action on the child nutrition bill. p. 22720
8. CORN. Sen. Miller commended the work of the Corn Refiners Association, Inc. pp. 22725-6
9. TARIFFS. Sen. Smathers gave a situation report on Kennedy Round tariff negotiations. pp. 22727-31
10. SEA-GRANT COLLEGES. Conferees were appointed on H. R. 16559, to authorize sea-grant colleges. House conferees have been appointed. p. 22748
11. BUILDINGS. Received from GSA a proposed bill "to amend the Public Buildings Act"; to Public Works Committee. p. 22676
12. EXPOSITION. The Foreign Relations Committee voted to report (but did not actually report) H. R. 15098, to provide for U. S. participation in the HemisFair 1968 Exposition, to be held in San Antonio. pp. D907-8
13. TRANSPORTATION. The Government Operations Committee voted to report (but did not actually report) S. 3010, to create a Department of Transportation. p. D908
14. POVERTY. The Labor and Public Welfare Committee voted to report (but did not actually report) S. 3164, to amend the Economic Opportunity Act. As approved, the bill would authorize \$2.496 billion for the fiscal year 1967. p. D908
15. ADJOURNED until Mon., Sept. 26. p. 22748

HOUSE

16. MILK PRICES. A subcommittee of the Armed Services Committee approved for full committee action H. R. 17500, amended, to provide for price adjustments in contracts for procurement of milk by the Department of Defense. p. D909
17. PACKAGING AND LABELING. The Interstate and Foreign Commerce Committee voted to report (but did not actually report) H. R. 15440, amended, to prevent the use of unfair or deceptive methods of packaging or labeling of certain consumer

Sept. 29, 1966

16. MILK PRICES. The Armed Services Committee voted to report (but did not actually report) with amendments S. 3834, to provide for price adjustments in contracts for the procurement of milk by the Defense Department when prices go up after USDA determinations. p. D931

17. EDUCATION. The Labor and Public Welfare Committee voted to report (but did not actually report) S. 3046, to authorize \$2.7 billion for elementary and secondary education for fiscal year 1967, and H. R. 14644, to authorize \$1.4 billion for higher education for that year. p. D931

ITEMS IN APPENDIX

18. CLEAN AIR. Rep. Ryan inserted the third and fourth part of a series of articles discussing the effects of air pollution in the U. S. pp. A5016-7, A5040-1

19. POVERTY. Speeches in the House by Rep. Quie during debate on the poverty bill. pp. A5017-8, A5021-2, A5028

20. REORGANIZATION. Rep. Brooks inserted editorials by Sen. Monroney and Rep. Madden explaining some of the proposals made by the Jt. Committee on the Organization of Congress. pp. A5023-4

Rep. Van Deerlin inserted an article, "Some Congressional Changes Would Be Help for Everyone." p. A5030

21. TRANSPORTATION. Rep. Downing inserted an address stressing the role of the American-flag merchant marine to the development of our Nation's commerce. pp. A5024-6

22. INFLATION. Rep. Rostenkowski inserted Rep. Murphy's address, "Economic Policy and Inflation." pp. A5027-8

23. 4-H CLUBS. Extension of remarks of Rep. Vivian paying tribute to 4-H Clubs. p. A5034

BILLS INTRODUCED

24. LABELING. H. Con. Res. 1024 by Rep. Dulski, expressing the sense of the Congress with respect to certain proposed regulations of the Food and Drug Administration relating to the labeling and content of diet foods and diet supplements; to Interstate and Foreign Commerce Committee.

25. HEARINGS; ORGANIZATION. H. Res. 1039 by Rep. McVicker, to amend the rules of the House to provide for a report and question period at which heads of departments, agencies, and independent establishments in the executive branch of the Government are requested to appear and answer questions; to Rules Committee.

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C. 20250
OFFICIAL BUSINESS

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OFFICE OF BUDGET AND FINANCE
(OR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

Issued Oct. 3, 1966
For actions of Sept. 30, 1966
89th-2nd; No. 166

CONTENTS

Adjournment.....	13, 24	Federal aid.....	26, 30	Poverty.....	4, 14, 28
Air pollution.....	11, 18, 20	Fish concentrate.....	10	Safety.....	30
Animal drugs.....	11	Food for peace.....	3	School milk.....	15
Appropriations.....	8, 31	4-H Clubs.....	25	Sea-grant colleges.....	16
Congressional..... reorganization.....	21	Health.....	17	Small business.....	7, 27
Consumers.....	22	Labeling.....	29	Taxation.....	1, 18
Diet foods.....	29	Lands.....	9	Transportation.....	6
Electrification.....	19	Legislative program.....	12	Veterinary facilities....	11
Extension work.....	5	Legislative record.....	27	Water pollution.....	2, 18
Family farms.....	23	Loans.....	7		
		Milk.....	15		

HIGHLIGHTS: House passed investment-credit suspension bill. Rep. Rhodes, Ariz., inserted Republican statement opposing deletion of Vietnam provision from food-for-peace bill. Senate debated poverty bill. Senate committee reported bill providing adjustment of Defense milk contracts when USDA orders prices raised.

HOUSE

1. TAXATION. Passed, 221-118, as reported H. R. 17607, the investment-credit suspension bill. pp. 23571-8, 23581-624
2. WATER POLLUTION. Passed with amendments H. R. 16076, to improve and make more effective programs under the Federal Water Pollution Control Act. House conferees were appointed. pp. 23578-9, 23624-67
3. FOOD FOR PEACE. Rep. Rhodes, Ariz., inserted a Republican Policy Committee statement opposing deletion of the Vietnam provision from the food-for-peace bill by the conferees. p. 23665

4. POVERTY. Rep. Devine criticized the poverty program and inserted articles on this subject, including the Job Corps. pp. 23665-6
5. EXTENSION WORK. Rep. Clarence Brown commended the work of 4-H clubs. p. 23678
6. TRANSPORTATION. Rep. Reuss inserted an economist's argument that tolls on the St. Lawrence Seaway should not be increased. pp. 23688-91
7. SMALL BUSINESS LOANS. Rep. Evins, Tenn., reviewed a study of the small-business loans program by the Small Business Committee. pp. 23694-6
8. STATE-JUSTICE-COMMERCE APPROPRIATION BILL. The Appropriations Committee reported this bill, H. R. 18119 (H. Rept. 2160). p. 23697
9. LANDS. The Merchant Marine and Fisheries Committee reported with amendment H. R. 13447, to authorize the Interior Department in cooperation with the States to preserve, protect, develop, restore, and make accessible estuarine areas which are valuable for sport and commercial fishing, wildlife conservation, recreation, and scenic beauty (H. Rept. 2162). p. 23697
10. FISH CONCENTRATE. The Merchant Marine and Fisheries Committee reported with amendment H. R. 14699, to authorize the Interior Department to develop practicable and economic means for production by the commercial fishing industry of fish protein concentrate (H. Rept. 2165). p. 23697
11. AIR POLLUTION; VETERINARY FACILITIES; ANIMAL DRUGS. The Interstate and Foreign Commerce Committee voted to report (but did not actually report) S. 3112, the Clean Air Act amendments; H. R. 3348, the proposed Veterinary Medical Educational Facilities Act; and H. R. 16474; to consolidate certain provisions of the Federal Food, Drug, and Cosmetic Act assuring the safety and effectiveness of new animal drugs. p. D938
12. LEGISLATIVE PROGRAM. Rep. Boggs announced the legislative program for this week: Mon., Consent Calendar and various bills under suspension of the rules, including fair packaging and labeling, clean air, atomic electric and desalting plant, requirement for contractors to give affidavit regarding payment of subcontractors, sale of grain storage facilities, disposal of geothermal steam, amendments to Intergovernmental Relations Act, preservation of estuarine areas, fish protein concentrate, veterinary school construction, child protective bill, and animal drug amendments. Tues. through Sat., various bills, including State-Justice-Commerce appropriations, elementary-secondary education amendments, and D. C. area transit authority.
13. ADJOURNED until Mon., Oct. 3. p. 23697

SENATE

14. POVERTY. Began debate on S. 3164, to continue and change various programs under the Economic Opportunity Act (pp. 23754-66), and placed on the calendar a similar House bill, H. R. 15111 (p. 23699).
15. MILK. The Armed Services Committee reported with amendment S. 3834, to provide for price adjustments in contracts for the procurement of milk by the Defense Department when prices go up after USDA determinations (S. Rept. 1668). p. 23699

Calendar No. 1635

89TH CONGRESS
2d Session }

SENATE }

REPORT
No. 1668

PROVIDING FOR PRICE ADJUSTMENTS IN CONTRACTS FOR THE PROCUREMENT OF MILK BY THE DEPARTMENT OF DEFENSE

SEPTEMBER 30, 1966.—Ordered to be printed

Mr. SALTONSTALL, from the Committee on Armed Services, submitted the following

R E P O R T

[To accompany S. 3834]

The Committee on Armed Services, to which was referred the bill (S. 3834) to amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

On page 1, beginning with line 7, strike out all down through the end of the bill on page 2, and insert in lieu thereof the following:

§ 2389. Contracts for the procurement of milk; price adjustment.

Under regulations prescribed by the Secretary of Defense, any contract for the procurement of fluid milk for beverage purposes which was being performed on or after March 1, 1966, may be amended to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture on or after March 1, 1966, increasing the price of milk. A price adjustment shall not be made unless it has been determined by the Department that—

- (1) such amount is not included in the contract price;
- (2) the contract does not otherwise contain a provision providing for an adjustment in price; and
- (3) the contractor will suffer a loss, not merely a diminution of anticipated profit, under the contract because of such increases in producer prices.; and

(2) By inserting the following new item in the analysis thereof:

"2389. Contracts for the procurement of milk; price adjustment."

EXPLANATION OF THE AMENDMENT

The amendment is in effect a substitute for the bill as proposed, designed to clarify certain salient features which are explained in the body of this report.

PURPOSE OF THE BILL

The purpose of the bill is to permit the Secretary of Defense to amend contracts entered into on or after March 1, 1966, for the procurement of fluid milk for beverage purposes to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture increasing the price of milk.

EXPLANATION OF THE BILL

This year, as a result of marked decline in milk production, the Secretary of Agriculture has seen fit to modify a number of milk marketing orders to increase the return to the dairy farmers, and in so doing hopefully reverse the downward production trend.

These adjustments could not be successfully anticipated by dairies because the prices ordered by the Secretary of Agriculture are minimum prices. Under milk marketing orders, dairies must pay these prices to their farmer-producers. No exception can be made because they anticipated a lower cost when bidding on a Department of Defense contract.

Certain dairies holding milk contracts with the Department of Defense are experiencing losses on their firm fixed-price contracts as the result of increased prices for raw milk ordered by the Secretary of Agriculture since March 1st of this year. The result of these milk marketing orders reportedly has been to increase the average price of raw milk approximately 90 cents per hundredweight, which is equivalent to about 8 cents per gallon.

Dairies contracting to supply the military departments with milk for use in mess halls and for resale in military commissaries are performing under fixed-price contracts which do not include a clause authorizing an amendment to the contract, in the event of unforeseen increases in the price of raw milk ordered by the Department of Agriculture. Because of this lack of authority of the Department of Defense to amend procurement contracts of this type, many of the dairies reportedly are faced with tremendous losses, and even bankruptcy in certain cases, if they attempt to fulfill their contracts.

In light of the circumstances concerning this unanticipated price increase, some remedial legislative action seems to be in order.

The Department of Defense agrees with the objectives of the proposed legislation. Under Federal milk marketing orders in effect in parts of 35 States and the District of Columbia the minimum price which the handler (the dairy) is required to pay the producer (the farmer) for fluid milk for beverage purposes is regulated by the Secretary of Agriculture. In March 1966 and again in June 1966 the Secretary of Agriculture increased these minimum prices. Handlers

subject to the orders, and holding long-term contracts with the Department of Defense on the effective date of the orders, were required to pay these increased prices to producers but could not obtain a corresponding increase in their fixed-price Defense contracts. In the absence of legislation the Department of Defense is unable to afford these contractors any relief.

Milk prices have been rising this past year even in those market areas which are not regulated by Federal milk marketing orders. Under subsection (a) of the bill as proposed, however, only dairies regulated by Federal milk marketing orders would be covered. Other dairies could also suffer losses just as severe because of actions of the Secretary of Agriculture, such as an increase in the support price for manufacturing milk or because of the impact on the market price for milk of amendments or suspensions of Federal milk marketing orders.

The Department of Defense was, prior to the introduction of S. 3834 already in the process of exploring several methods for achieving the objectives of the legislation. Among the methods being considered are use of an escalation provision, shorter term contracts, and provisions for adjustment prices on contract extensions. It might appear that escalation is an obvious method for accomplishing the objective. However, it is not only cumbersome to administer, but difficult to apply equitably to all contractors. Procurement of milk is made by formal advertising with award made to the low competitive bidder. Hence, an escalation clause would pose problems to which the Department at this point does not have ready answers.

For example, there would be problems in evaluating bids between handlers in regulated areas and handlers in nonregulated areas and in assessing the impact of the marketing order on a particular contract without knowledge of the cost basis for the handler's bid. These problems are compounded by the fact that the price of fluid milk is regulated by over 70 different Federal milk marketing orders and numerous State and local controls. Furthermore, enactment of provisions requiring the inclusion of escalation clauses in milk contracts would establish an undesirable precedent which would tend to undermine the benefits of competitive fixed-price contracting. Accordingly, it was believed desirable to delete subsection (a) of the bill as proposed with the understanding that the Department of Defense will develop procedures in connection with the procurement of milk within existing administrative authority to avoid situations comparable to that which occurred as a consequence of the recent actions by the Department of Agriculture.

Subsection (b) of the bill as proposed was designed to provide relief for those Defense contractors required to pay higher prices to milk producers because of increases in producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture. However, the bill would not provide relief for those contractors required to pay higher prices to producers because of increases in the price of manufacturing milk ordered by the Secretary of Agriculture. In areas not covered by Federal milk marketing orders this increase in the manufacturing milk price could have had an effect on the price paid by Defense contractors to producers for fluid milk for beverage purposes because of its impact on the general market price for milk. In order to provide equitable treatment for all Defense contractors adversely affected by orders of the Secretary of Agriculture in increasing the price of milk, it was found necessary to revise subsection (b)

of the bill to provide for price adjustments on the basis of actions of the Secretary of Agriculture increasing the price of milk without limiting such action to increases in producer prices for fluid milk for beverage purposes. Regulations would provide that contractors seeking relief under such a provision would be required to show how these actions of the Secretary of Agriculture affected the price they were required to pay.

In light of the above, new language was drafted incorporating the desired changes. The revised language makes clear that an adjustment in the contract price is not authorized for loss of anticipated profits.

FISCAL DATA

The cost to the Department of Defense for the price adjustments authorized by this measure cannot be ascertained at this time. Each contract involved must be considered on an individual basis. It is estimated that there are some 350 to 375 contracts valued at around \$70 million to \$75 million, of which an estimated 90 percent relate to fluid milk for beverage purposes.

DEPARTMENTAL POSITION

There is set forth below and made a part of this report a letter dated September 28, 1966, from the General Counsel of the Department of Defense indicating that the Department of Defense agrees with the objectives of this legislation.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., September 28, 1966.

Hon. RICHARD B. RUSSELL,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of Defense on S. 3834, 89th Congress, a bill to amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

The purpose of the bill is to require the inclusion in future Department of Defense contracts for the procurement of milk of a provision for equitable price adjustments for increased or decreased prices paid by a contractor for such milk as a result of increases or decreases ordered by the Secretary of Agriculture in the producer prices of fluid milk for beverage purposes. The bill would also provide relief for contractors performing contracts for milk on or after March 1, 1966, who have suffered losses because of increases in producer prices for fluid milk for beverage purposes ordered by the Secretary of Agriculture on or after March 1, 1966, where the contracts contain no provision for such price adjustment.

The Department of Defense agrees with the objectives of the proposed legislation. Under Federal milk marketing orders in effect in parts of 35 States and the District of Columbia the minimum price which the handler (the dairy) is required to pay the producer (the farmer) for fluid milk for beverage purposes is regulated by the Secretary of Agriculture. In March 1966 and again in June 1966 the Secretary of Agriculture increased these minimum prices. Handlers

subject to the orders and holding long-term contracts with the Department of Defense on the effective date of the orders were required to pay these increased prices to producers but could not obtain a corresponding increase in their fixed price Defense contracts. In the absence of legislation the Department of Defense is unable to afford these contractors any relief.

Milk prices have been rising this past year even in those market areas which are not regulated by Federal milk marketing orders. Under subsection (a), however, only dairies regulated by Federal milk marketing orders would be covered. Other dairies could also suffer losses just as severe because of actions of the Secretary of Agriculture such as an increase in the support price for manufacturing milk or because of the impact on the market price for milk of amendments or suspension of Federal milk marketing orders.

The Department of Defense was, prior to the introduction of S. 3834, already in the process of exploring several methods for achieving the objectives of the legislation. Among the methods being considered are use of an escalation provision, shorter term contracts, and provisions for adjusting prices on contract extensions. It might appear that escalation is an obvious method for accomplishing the objective. However, it is not only cumbersome to administer, but difficult to apply equitably to all contractors. Procurement of milk is made by formal advertising with award made to the low competitive bidder. Hence, an escalation clause would pose problems to which we do not at this point have ready answers. For example, there would be problems in evaluating bids between handlers in regulated areas and handlers in nonregulated areas and in assessing the impact of the marketing order on a particular contract without knowledge of the cost basis for the handler's bid. These problems are compounded by the fact that the price of fluid milk is regulated by over 70 different Federal milk marketing orders and numerous State and local controls. Furthermore, enactment of provisions requiring the inclusion of escalation clauses in milk contracts would establish an undesirable precedent which would tend to undermine the benefits of competitive fixed-price contracting. Producers and suppliers of many other commodities susceptible to cost changes could be expected to seek similar legislation. Accordingly, it is recommended that subsection (a) of the proposed section be deleted with the understanding that the Department of Defense will develop procedures in connection with the procurement of milk within existing administrative authority to avoid situations comparable to that which occurred as a consequence of the recent actions by the Department of Agriculture.

Subsection (b) of the proposed new section would provide relief for those Defense contractors required to pay higher prices to milk producers because of increases in producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture. However, the bill would not provide relief for those contractors required to pay higher prices to producers because of increases in the price of manufacturing milk ordered by the Secretary of Agriculture. In areas not covered by Federal milk marketing orders this increase in the manufacturing milk price could have had an effect on the price paid by Defense contractors to producers for fluid milk for beverage purposes because of its impact on the general market price for milk. In order to provide equitable treatment for all Defense contractors adversely

affected by orders of the Secretary of Agriculture in increasing the price of milk, it would be necessary to revise subsection (b) of the bill to provide for price adjustments on the basis of actions of the Secretary of Agriculture increasing the price of milk without limiting such action to increases in producer prices for fluid milk for beverage purposes. Regulations would provide that contractors seeking relief under such a provision would be required to show how these actions of the Secretary of Agriculture affected the price they were required to pay.

There is enclosed for your consideration a draft of a bill incorporating the changes recommended above. In addition, a clarifying change is recommended in subsection (b)(3), line 22, page 2 of the bill. The revised language in the enclosed draft makes clear that an adjustment in the contract price under the bill is not authorized for loss of anticipated profits. Also, the new section should be numbered 2389 instead of 2390 since the last section in chapter 141, title 10, is now numbered 2388.

The cost to the Department of Defense of the price adjustments authorized by the bill cannot be ascertained at this time.

The Bureau of the Budget advises that while there is no objection to the submission of this report, the Bureau is seriously concerned about the enactment of legislation to pay for losses incurred in the performance of a fixed-price Government contract. In general, the Bureau of the Budget thinks the reasons cited earlier in the report against inclusion of escalation clauses in future contracts are equally valid arguments against provision of relief for losses sustained under past contracts. In particular, it appears to the Bureau that long-term suppliers of milk under the contracts covered by the bill assumed the risk of rising milk prices during the contract period; signs of rising prices evidently appeared in the latter part of 1965, and the actions of the Secretary of Agriculture not only tended to follow rather than force price rise but also were only one element in the extremely complex play of market forces determining the price of milk. To grant relief to the suppliers covered by this bill could easily lead, in the opinion of the Bureau, to demands for similar relief by suppliers of milk to other Federal and to non-Federal consumers as well as by all suppliers of commodities and services who assert their losses are due to official actions of the Federal Government.

Sincerely yours,

PAUL C. WARNKE.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows:

Chapter 141 of title 10, United States Code, is amended by inserting at the end thereof the following new section:

“§ 2389. Contracts for the procurement of milk; price adjustment

“Under regulations prescribed by the Secretary of Defense, any contract for the procurement of fluid milk for beverage purposes which was being performed on or after March 1, 1966, may be amended to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as

a result of action by the Secretary of Agriculture on or after March 1, 1966, increasing the price of milk. A price adjustment shall not be made unless it has been determined by the Department that—

“(1) such amount is not included in the contract price;

“(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

“(3) the contractor will suffer a loss, not merely a diminution of anticipated profit, under the contract because of such increases in producer prices.”; and

(2) By inserting the following new item in the analysis thereof: “2389. Contracts for the procurement of milk; price adjustment.”



Calendar No. 1635

89TH CONGRESS
2D SESSION

S. 3834

[Report No. 1668]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14 (legislative day, SEPTEMBER 7), 1966

Mr. ALLOTT (for himself and Mr. DOMINICK) introduced the following bill; which was read twice and referred to the Committee on Armed Services

SEPTEMBER 30, 1966

Reported by Mr. SALTONSTALL, with an amendment

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 141 of title 10, United States Code, is
4 amended—

5 (1) by inserting at the end thereof the following
6 new section:

7 **“§ 2390. Contracts for the procurement of milk; price
8 adjustment”**

9 “(a) Under regulations prescribed by the Secretary of
10 Defense a contract of the Department of Defense for the

1 procurement of milk where the period of performance ex-
2 ceeds ninety days shall include a provision for an equitable
3 price adjustment for increased or decreased prices paid by
4 a contractor for such milk as a result of increases or decreases
5 in the producer price of fluid milk for beverage purposes
6 ordered by the Secretary of Agriculture after the date of
7 bid opening in a formally advertised procurement or the
8 date of the contract in a negotiated procurement.

9 “(b) Under regulations prescribed by the Secretary of
10 Defense, any contract for the procurement of milk which was
11 being performed on or after March 1, 1966, may be
12 amended to provide an equitable price adjustment for in-
13 creased prices paid by a contractor for such milk as a result
14 of increases in the producer prices of fluid milk for beverage
15 purposes ordered by the Secretary of Agriculture on or
16 after March 1, 1966. A price adjustment shall not be made
17 unless it has been determined by the Department that—
18 “(1) such amount was not included in the contract
19 price;

20 “(2) the contract does not otherwise contain a pro-
21 vision providing for an adjustment in price; and
22 “(3) the contractor will suffer a loss under the
23 contract because of such increases in producer prices.”

1 (2) by inserting the following new item in the
2 analysis thereof:

“2390. Contracts for the procurement of milk; price adjustment.”

3 “§ 2389. *Contracts for the procurement of milk; price ad-*
4 *justment*

5 “Under regulations prescribed by the Secretary of De-
6 fense, any contract for the procurement of fluid milk for
7 beverage purposes which was being performed on or after
8 March 1, 1966, may be amended to provide a price adjust-
9 ment for losses incurred by a contractor because of increased
10 prices paid to the producers for such milk as a result of
11 action by the Secretary of Agriculture on or after March 1,
12 1966, increasing the price of milk. A price adjustment shall
13 not be made unless it has been determined by the Department
14 that—

15 “(1) such amount is not included in the contract
16 price;

17 “(2) the contract does not otherwise contain a pro-
18 vision providing for an adjustment in price; and

19 “(3) the contractor will suffer a loss, not merely a
20 diminution of anticipated profit, under the contract be-
21 cause of such increases in producer prices.”; and

A BILL

To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

By Mr. ALLORR and Mr. DOMINICK

SEPTEMBER 14 (legislative day, SEPTEMBER 7), 1966

Read twice and referred to the Committee on Armed Services

SEPTEMBER 30, 1966

Reported with an amendment

- 1 (2) By inserting the following new item in the analysis
2 thereof:

"2389. Contracts for the procurement of milk; price adjustment."

the coordinating committee, to the effect that there is complete nonpartisanship in our Vietnam commitment. Republicans have sought to bring about a feeling of unity on the part of our country with respect to the struggle in Vietnam.

The impact of this should be understood by the electorate. In my judgment, whether one votes for candidate A or candidate B, it must be made clear that it is not a party issue. This kind of problem has never been a party issue in our country. I look with great dissatisfaction—I deplore—attempts to make it a party issue. It will be our purpose in the days ahead to make clear that it is not a party issue, and that there is a real sense of unity—certainly on this side of the aisle—and the President has needed Republican support—strong support with respect to the U.S. commitment in Vietnam. There will be Republican support for efforts to bring about a negotiated settlement.

RELIEF FOR ESTATES OF CERTAIN FORMER MEMBERS OF THE U.S. NAVY BAND

MR. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1603, H.R. 5912.

THE PRESIDING OFFICER. The bill will be stated by title.

THE LEGISLATIVE CLERK. A bill (H.R. 5912) for the relief of the estates of certain former members of the U.S. Navy Band.

THE PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

MR. MANSFIELD. Mr. President, the passage of this bill will represent the necessary final action of the Congress fulfilling our earlier action of referring this issue to the Court of Claims for a determination of the equities involved. The opinion handed down by the Court of Claims determined that the beneficiaries are entitled to the relief specified in this bill.

Congress has requested the court to decide the equities and to recommend action. The bill simply carries out the recommendation of the court.

However, the passage of this bill will not be a precedent for future measures of this nature. The Supreme Court has precluded the congressional reference procedure and Congress has accordingly abandoned seeking advisory opinions of this sort.

Since Congress saw fit to refer this case to the Court of Claims for its determination, the beneficiaries should be able to rely upon congressional acceptance of the court's recommendation. Otherwise, our good faith would be called into question.

I ask unanimous consent to have placed in the RECORD pertinent excerpts from the committee report.

There being no objection, the extract (Rept. No. 1634) was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the proposed legislation is to pay \$25,000 to each of the estates of 18 named former members of the U.S. Navy Band who lost their lives in a plane crash which occurred during a flight from Buenos Aires, Argentina, to Rio de Janeiro, Brazil, on February 25, 1960. The payment would be made in accordance with the recommendations of an opinion in a congressional reference case decided by the U.S. Court of Claims on December 11, 1964.

STATEMENT

In agreement with the views of the House and the recommendation of the Court of Claims, the committee recommends favorable enactment.

The facts of the case found in House Report No. 1719 are as follows:

"During the 86th Congress, the bill, H.R. 11905, providing for payment to the estates of all of the Navy Band members who lost their lives in the February 25, 1960, crash was referred to the U.S. Court of Claims in accordance with the provisions of House Resolution 585 of that Congress. That resolution, approved on August 23, 1960, directed the Court of Claims to make findings of fact and recommendations relative to the bill in accordance with the provisions of sections 1402 and 2509 of title 28 of the United States Code. The Court proceeded to a consideration of the matter and rendered its decision on December 11, 1964. That decision and the accompanying findings of fact are set forth as a part of this report and the committee recommends that the bill, amended to make specific reference to this decision, be considered favorably."

In agreement with the views of the House and the Court of Claims, the committee recommends favorable enactment.

MR. SMATHERS. Mr. President, the purpose of the pending measure is to pay \$25,000 to each of the estates of 18 named former members of the U.S. Navy Band, who lost their lives in a plane crash which occurred during a flight from Buenos Aires, Argentina, to Rio de Janeiro, Brazil, on February 25, 1960.

At the outset let me make one point perfectly clear and that is that no one is more sympathetic in the loss of loved ones than I am. My only purpose in opposing the pending measure is to first inform the Senate as to what they are voting on, and secondly to hope that the Senate will not set what I know will become a most unfortunate precedent.

Some time ago Congress passed what is known as the congressional reference statute which permits either House to refer a set of facts to the Court of Claims for determination of fact and law and to get a recommendation. Any action taken by the U.S. Court of Claims under this reference statute is completely advisory, and not binding.

Subsequent to the particular case, which was referred by the House committee to the Court of Claims, the Supreme Court decided in the Glidden case that congressional reference cases were illegal, as they did not present a case in controversy, but the cutoff date permitted pending cases such as the band case to be completed.

The Court of Claims essentially did two things, as follows:

First. Found that the Government was negligent. Reason: Bandmaster had been supplying insurance forms for 10

years, a course of conduct relied upon by the band to their detriment. On this trip no forms were supplied. No law required bandmaster to do that function—he was a volunteer—nevertheless, under reliance findings his conduct was negligent.

Second. After making a finding of fact the Court of Claims stated:

For these reasons, we think that the estate or representative of each of the 18 deceased bandsmen, on behalf of whom this suit is brought, is entitled to equitable relief in the amount of \$25,000.

I would like to specifically point out that this is not a judgment of the Court of Claims. If it were a judgment no legislation would be needed.

On the basis of this recommendation to the House committee, the pending legislation was introduced, passed by the House and reported favorably by the Senate Judiciary Committee.

Let me point out that no hearings were held by the Senate Judiciary Committee, nor in the report before us are the views of the Department of Defense which is opposed to the passage of this type of what I believe to be discriminatory legislation.

Let me briefly outline why I feel that legislation of this type should not be approved by the Congress:

First. The plane consisted of three groups of personnel: the band, the crew of seven, and the eight members of the ASW team—hazardous duty. The pending measure provides payment to 18 members of the band.

Second. The precedent—how can you pay the band and not the estates of deceased personnel in South Vietnam, or for that matter, all wars?

Third. The Senate is asked to act on the House report which contains no departmental reports. The Navy Department has informally notified the committee it opposes the bill, yet the Senate Judiciary Committee report is silent on this, for the reason no time was allowed to request departmental reports.

Fourth. The pending measure, in my opinion, should be referred to the Senate Armed Services Committee since it concerns armed service policy.

Fifth. No veterans groups have been requested to report on the bill.

Sixth. No hearings have been held in the Senate.

Seventh. One band family did not join in the court suit. The ridiculous result is that 18 band members will be paid, whereas one will not. In addition combat personnel aboard the same plane would not be entitled to any benefits.

Eighth. There is confusion over Congressional Reference cases. The Court's opinion is not a judgment—it binds no one—it changes no right, duties or obligations. It is simply advisory.

Ninth. Reference cases have a place in contracts where the facts are difficult for a congressional committee. A finding of facts in contract, may be an aid to Congress which should be wary of referring tort cases. Supreme Court has now knocked them out, and the reason the Supreme Court acted was to prevent the instant problem.

October 4, 1966

Tenth. The bill discriminates against others similarly situated.

Eleventh. Band families are receiving all existing Government gratuities—insurance, burial gratuities, protection for wife and children. This bill is in addition to existing compensations.

Twelfth. This problem should be handled by general legislation. That is why it should go to Armed Services. If the Congress wishes servicemen's insurance as a whole may be increased.

The Department of the Navy on behalf of the Department of Defense, submitted its views to the chairman of the House Judiciary Committee, as well as the chairman of the Senate Judiciary Committee, pointing out in part that it "cannot support the enactment of H.R. 5912 because to provide by legislation, additional financial remuneration for the next of kin of the 18 band members who died in the air collision over Rio de Janeiro, would, be singling out these limited few for preferential treatment, discriminate not only against the next of kin of the 17 other Navy men who died in the same crash, but also against the many other dependents and families who have, under comparable circumstances, lost their husbands or sons or daughters in the service of their country."

I ask unanimous consent that the views of the Department of the Navy as submitted to me through the General Counsel, Department of Defense, be made a part of the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., September 27, 1966.

Hon. GEORGE A. SMATHERS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SMATHERS: Subsequent to my conversation with your office, upon investigation I find that a report on H.R. 5912 was rendered by the Department of the Navy on behalf of the Department of Defense.

A copy of this report, dated May 19, 1965, and a subsequent additional comment, dated September 10, 1965, are attached.

Sincerely yours,

PAUL C. WARNKE.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., September 10, 1965.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of July 27, 1965 to the Secretary of the Navy requesting comment on a proposed Amendment No. 368 to S. 1503, a bill "For the relief of the estates of certain former members of the United States Navy Band."

This Amendment would direct the Secretary of the Treasury to pay to the estate of each of the former members of the United States Navy Band, the sum of \$25,000, representing the amount found by the United States Court of Claims (congressional numbered 11-60, decided December 11, 1964), pursuant to H. Res. 585, 86th Congress, to be equitably due each such estate.

Notwithstanding the decision of the United States Court of Claims in this case, the Navy cannot support the enactment of the proposed Amendment No. 368 for the

reasons stated in the Department of the Navy report dated May 19, 1965 on S. 1503.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

M. K. DISNEY,

Captain, U.S. Navy, Director, Legislative Division

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., May 19, 1965.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of March 9, 1965 to the Secretary of the Navy requesting comment on H.R. 5912, a bill "For the relief of the estates of certain former members of the United States Navy Band."

This bill would authorize and direct the Secretary of the Treasury to pay as equitable relief the sum of \$25,000 to each of the estates of 18 former members of the United States Navy Band who were killed in a plane crash during a flight from Buenos Aires, Argentina to Rio de Janeiro, Brazil on February 25, 1960.

On May 17, 1960, a special subcommittee of the House Committee on Armed Services completed report No. 59 which, on p. 5818, contains a comprehensive analysis of monetary benefits received, or to be received under present law by the next of kin of all casualties, including the 19 band members, who died in the Rio plane crash. The Subcommittee in this report commented that a study of this table of benefits, "will demonstrate the wisdom and equity of present law and the substantial nature of these benefits." It also noted that "these benefits are provided without reference to the fact that certain of the deceased were bandsmen while others were crew members or simply passengers."

In addition to the direct monetary benefits above mentioned, as a general rule, the widows and dependents will be entitled to medical care in military hospitals, commissary and exchange privileges, and numerous benefits of a lesser nature which are extended to widows of military personnel who die in the line of duty.

Congress in 1956 carefully studied survivor's benefits and in Public Law 881 of the 84th Congress authorized survivor's benefits that were substantially larger than those previously provided. At the same time Congress considered that the enlarged scope of survivor's benefits eliminated the need for Government insurance and therefore repealed the provision of law which provided for automatic \$10,000 free Government insurance. Insurance for personnel in the armed forces since that time has been a personal matter with the individual concerned. The Navy has constantly instructed its personnel that they should make arrangements for any insurance that they feel to be necessary for the financial protection of their survivors. In this connection it should be noted that the records of the Department of the Navy show that 22 of the 27 deceased personnel who were survived by dependents had taken out insurance, either NSLI or private.

This data may not necessarily be complete inasmuch as there is no requirement that a member of the naval service notify the Navy of his insurance coverage. The Navy renders whatever assistance is possible to help its personnel in their affairs but there is no obligation on the part of the military services to make insurance available. Whether or not a member of the armed forces buys insurance is strictly a matter of personal

election as evidenced by the fact that about one-fourth of the band members, including some of the deceased who are named in H.R. 5912, bought no insurance for the trip from Washington to Trinidad.

The loss of loved ones is a tragic occurrence regardless of the circumstances surrounding the death. There will always be understandable sadness in the homes of the survivors, however, it is sincerely believed that the not inconsiderable benefits received by the survivors from the Government, while never adequate to compensate for the loss of a loved one, are most fair and compare favorably with the benefits paid by any organization in the country. The Department of the Navy "cannot support the enactment of H.R. 5912 because to provide by legislation, additional financial remuneration for the next of kin of the eighteen band members who died in the air collision over Rio de Janeiro, would, be singling out these limited few for preferential treatment, discriminate not only against the next of kin of the seventeen other Navy men who died in the same crash, but also against the many other dependents and families who have, under comparable circumstances, lost their husbands or sons or daughters in the service of their country."

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

C. R. KEAR, Jr.,

Captain, U.S. Navy, Deputy Chief.

Mr. SMATHERS. In my opinion, if we pass legislation of this nature we will set a bad precedent, and for the reasons stated, I am opposed to its passage.

The PRESIDING OFFICER. The bill is open to amendment.

If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was ordered to a third reading, read the third time, and passed.

PRICE ADJUSTMENTS IN CONTRACTS FOR THE PROCUREMENT OF MILK BY THE DEPARTMENT OF DEFENSE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1635, S. 3834.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 3834) to amend chapter 141 of title 10, United States Code, to provide for price adjustment in contracts for the procurement of milk by the Department of Defense.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services with an amendment on page 1, after line 6, to strike out:

"§ 2390. Contracts for the procurement of milk; price adjustment

"(a) Under regulations prescribed by the Secretary of Defense a contract of the Department of Defense for the procurement

of milk where the period of performance exceeds ninety days shall include a provision for an equitable price adjustment for increased or decreased prices paid by a contractor for such milk as a result of increases or decreases in the producer price of fluid milk for beverage purposes ordered by the Secretary of Agriculture after the date of bid opening in a formally advertised procurement or the date of the contract in a negotiated procurement.

"(b) Under regulations prescribed by the Secretary of Defense, any contract for the procurement of milk which was being performed on or after March 1, 1966, may be amended to provide an equitable price adjustment for increased prices paid by a contractor for such milk as a result of increases in the producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture on or after March 1, 1966. A price adjustment shall not be made unless it has been determined by the Department that—

"(1) such amount was not included in the contract price;

"(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

"(3) the contractor will suffer a loss under the contract because of such increases in producer prices."

(2) By inserting the following new item in the analysis thereof:

"2389. Contracts for the procurement of milk; price adjustment."

And, in lieu thereof, to insert:

"\$2389. Contracts for the procurement of milk; price adjustment

"Under regulations prescribed by the Secretary of Defense, any contract for the procurement of fluid milk for beverage purposes which was being performed on or after March 1, 1966, may be amended to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture on or after March 1, 1966, increasing the price of milk. A price adjustment shall not be made unless it has been determined by the Department that—

"(1) such amount is not included in the contract price;

"(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

"(3) the contractor will suffer a loss, not merely a diminution of anticipated profit, under the contract because of such increases in producer prices."; and

(2) By inserting the following new item in the analysis thereof:

"2389. Contracts for the procurement of milk; price adjustment."

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 141 of title 10, United States Code, is amended—

(1) by inserting at the end thereof the following new section:

"\$ 2389. Contracts for the procurement of milk; price adjustment

"Under regulations prescribed by the Secretary of Defense, any contract for the procurement of fluid milk for beverage purposes which was being performed on or after March 1, 1966, may be amended to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture on or after March 1, 1966, increasing the price of milk. A price adjustment shall not be made unless it has been determined by the Department that—

"(1) such amount is not included in the contract price;

"(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

"(3) the contractor will suffer a loss, not merely a diminution of anticipated profit, under the contract because of such increases in producer prices."; and

(2) By inserting the following new item in the analysis thereof:

"2389. Contracts for the procurement of milk; price adjustment."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1668), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to permit the Secretary of Defense to amend contracts entered into on or after March 1, 1966, for the procurement of fluid milk for beverage purposes to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture increasing the price of milk.

EXPLANATION OF THE BILL

This year, as a result of marked decline in milk production, the Secretary of Agriculture has seen fit to modify a number of milk marketing orders to increase the return to the dairy farmers, and in so doing hopefully reverse the downward production trend.

These adjustments could not be successfully anticipated by dairies because the prices ordered by the Secretary of Agriculture are minimum prices. Under milk marketing orders, dairies must pay these prices to their farmer-producers. No exception can be made because they anticipated a lower cost when bidding on a Department of Defense contract.

Certain dairies holding milk contracts with the Department of Defense are experiencing losses on their firm fixed-price contracts as the result of increased prices for raw milk ordered by the Secretary of Agriculture since March 1st of this year. The result of these milk marketing orders reportedly has been to increase the average prices of raw milk approximately 90 cents per hundredweight, which is equivalent to about 8 cents per gallon.

Dairies contracting to supply the military departments with milk for use in mess halls and for resale in military commissaries are performing under fixed-price contracts which do not include a clause authorizing an amendment to the contract, in the event of unforeseen increases in the price of raw milk ordered by the Department of Agriculture.

Because of this lack of authority of the Department of Defense to amend procurement contracts of this type, many of the dairies reported are faced with tremendous losses, and even bankruptcy in certain cases, if they attempt to fulfill their contracts.

In light of the circumstances concerning this unanticipated price increase, some remedial legislative action seems to be in order.

The Department of Defense agrees with the objectives of the proposed legislation. Under Federal milk marketing orders in effect in parts of 35 States and the District of Columbia the minimum price which the handler (the dairy) is required to pay the producer (the farmer) for fluid milk for beverage purposes is regulated by the Secretary of Agri-

culture. In March 1966 and again in June 1966 the Secretary of Agriculture increased these minimum prices. Handlers subject to the orders, and holding long-term contracts with the Department of Defense on the effective date of the orders, were required to pay these increased prices to producers but could not obtain a corresponding increase in their fixed-price Defense contracts. In the absence of legislation the Department of Defense is unable to afford these contractors any relief.

Milk prices have been rising this past year, even in those market areas which are not regulated by Federal milk marketing orders. Under subsection (a) of the bill as proposed, however, only dairies regulated by Federal milk marketing orders would be covered. Other dairies could also suffer losses just as severe because of actions of the Secretary of Agriculture, such as an increase in the support price for manufacturing milk or because of the impact on the market price for milk of amendments or suspensions of Federal milk marketing orders.

The Department of Defense was, prior to the introduction of S. 3834 already in the process of exploring several methods for achieving the objectives of the legislation. Among the methods being considered are use of an escalation provision, shorter term contracts, and provisions for adjustment prices on contract extensions. It might appear that escalation is an obvious method for accomplishing the objective. However, it is not only cumbersome to administer, but difficult to apply equitably to all contractors. Procurement of milk is made by formal advertising with ward made to the low competitive bidder. Hence, an escalation clause would pose problems to which the Department at this point does not have ready answers.

For example, there would be problems in evaluating bids between handlers in regulated areas and handlers in nonregulated areas and in assessing the impact of the marketing order on a particular contract without knowledge of the cost basis for the handler's bid. These problems are compounded by the fact that the price of fluid milk is regulated by over 70 different Federal milk marketing orders and numerous State and local controls. Furthermore, enactment of provisions requiring the inclusion of escalation clauses in milk contracts would establish an undesirable precedent which would tend to undermine the benefits of competitive fixed-price contracting. Accordingly, it was believed desirable to delete subsection (a) of the bill as proposed with the understanding that the Department of Defense will develop procedures in connection with the procurement of milk within existing administrative authority to avoid situations comparable to that which occurred as a consequence of the recent actions by the Department of Agriculture.

Subsection (b) of the bill as proposed was designed to provide relief for those Defense contractors required to pay higher prices to milk producers because of increases in producer prices of fluid milk for beverage purposes ordered by the Secretary of Agriculture. However, the bill would not provide relief for those contractors required to pay higher prices to producers because of increases in the price of manufacturing milk ordered by the Secretary of Agriculture. In areas not covered by Federal milk marketing orders this increase in the manufacturing milk price could have had an effect on the price paid by Defense contractors to producers for fluid milk for beverage purposes because of its impact on the general market price for milk. In order to provide equitable treatment for all Defense contractors adversely affected by orders of the Secretary of Agriculture in increasing the price of milk, it was found necessary to revise subsection (b) of the bill to provide for price adjustments on the basis of actions of

the Secretary of Agriculture increasing the price of milk without limiting such action to increases in producer prices for fluid milk for beverage purposes. Regulations would provide that contractors seeking relief under such a provision would be required to show how these actions of the Secretary of Agriculture affected the price they were required to pay.

In light of the above, new language was drafted incorporating the desired changes. The revised language makes clear that an adjustment in the contract price is not authorized for loss of anticipated profits.

FISCAL DATA

The cost to the Department of Defense for the price adjustments authorized by this measure cannot be ascertained at this time. Each contract involved must be considered on an individual basis. It is estimated that there are some 350 to 375 contracts valued at around \$70 million to \$75 million, of which an estimated 90 percent relate to fluid milk for beverage purposes.

AWARD OF EXEMPLARY REHABILITATION CERTIFICATES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1636, H.R. 16646.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 16646) to amend title 10, United States Code, to authorize the award of exemplary rehabilitation certificates to certain individuals after considering their character and conduct in civilian life after discharge or dismissal from the Armed Forces, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services with an amendment on page 2, line 8, after the word "honorable", to insert "or who received a general discharge".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1669), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

This bill, as amended, would authorize the Secretary of Labor to issue an "exemplary rehabilitation certificate" to a person discharged or dismissed from an Armed Force under conditions other than honorable or to a person who had received a general discharge if the person establishes that he has rehabilitated himself, that his character is good, and that his conduct since release from the armed services has been good for at least 3 years.

BACKGROUND

For several years, Members of Congress have been concerned with finding a method for mitigating the lasting, harmful effects of military discharges of a less than honorable type, without impairing military discipline and without detracting from the value of a discharge under honorable conditions. There is general recognition that the less than honorable discharge is a severe handicap in securing employment and that many persons receive such discharges as a result of misconduct when they were young and not sufficiently aware of the serious consequences of their action.

H.R. 16646 has evolved through several attempted legislative solutions for this problem. Like its precursors, this bill would permit a person discharged with other than an honorable discharge to establish that his postservice conduct and reputation have been good and to receive a certificate to this effect; unlike the preceding bills, H.R. 16646 authorizes the issuance of such a certificate by an agency of Government other than the Department of Defense, which considers that evaluation of performance in civilian life is not an appropriate function for it.

The certificate that could be awarded by the Secretary of Labor under the authority of this bill would not entitle a recipient to any benefits unless he would be entitled to those benefits under his original discharge or dismissal. The Secretary of Labor, however, would be authorized to extend special counseling and job development assistance to persons who receive exemplary rehabilitation certificates.

Under the bill at least 3 years must elapse between the military discharge and the date the person applies to the Secretary of Labor for a certificate.

The Secretary must consider relevant evidence that would establish to his satisfaction that (a) the person has rehabilitated himself, (b) his character is good, and (c) his conduct, activities, and habits since he was discharged have been exemplary. Such evidence could be written or oral and it could include such things as notarized statements from law enforcement officers, employers, and persons in a position to judge the applicant's reputation and conduct.

COST

The Department of Labor informed the committee that the increased cost that would result from this bill would be negligible.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

NOMINATION AND SELECTION OF CANDIDATES FOR APPOINTMENT TO THE MILITARY, NAVAL, AND AIR FORCE ACADEMIES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1638, H.R. 9916.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 9916) to amend title 10, United States Code, with respect to the nomination and selection of candidates for appointment to the Military, Naval, and Air Force Academies and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1670), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The basic purpose of the bill is to broaden several of the categories of persons eligible for appointment to the three service academies. The principal provision of the bill

would make the sons of all career members of the Armed Forces, irrespective of whether they are members of the Regular or Reserve components, eligible for appointment to the service academies under the Presidential category.

PROVISIONS OF THE BILL

Change in Presidential competitive category to include sons of all members of the Armed Forces who serve on active duty continuously for at least 8 years

Under existing law only the sons of members of the Regular components of the armed services are eligible to compete for appointment under the Presidential quota providing for the annual appointment of 75 cadets or midshipmen to each of the service academies. The bill changes this category of appointments in two respects. First, the number of appointments authorized to be made annually from this category would be increased from 75 to 100. The effect of increasing by 25 the number of appointments for this category would be to increase the statutory strength of each Academy on a 4-year cumulative basis from 4,417 to 4,517.

It is not the intent of this bill to increase the total number of cadets or midshipmen actually attending an Academy. Existing and planned facilities are geared to the maximum presently authorized by law. To offset the proposed increase of up to 25 per year, there will be a corresponding decrease in the number of secretarial qualified alternates who might otherwise be admitted.

Second, the bill provides for Presidential appointments from sons of any members of the Armed Forces who have served on active duty continuously for at least 8 years, or any members of the Armed Forces who are retired with pay or who died while retired with pay, other than those granted retired pay under section 1331 of title 10, United States Code. This latter provision relates to the entitlement of retired pay to members of the Reserve components who complete 20 years' satisfactory service and become eligible for retired pay at age 60.

The effect of the bill is to make the sons of all career members who have completed 8 years of active service eligible for appointment from the Presidential category in lieu of the present language which restricts the appointments to those who are sons of regular members.

Broadening of eligibility for sons of deceased veterans

Under existing law competitive appointments for the sons of deceased veterans are limited to the sons of veterans who died or were 100 percent disabled as a result of action during World War I or World War II or the Korean conflict.

The bill would broaden the eligibility for this category by making eligible for appointment the sons of veterans who are 100-percent disabled and to the sons of veterans who are killed or disabled as a result of active duty. The effect would be to include the sons of service members who were killed or totally disabled in the line of duty at any time, with the result, of course, that the proposed change would include the sons of members killed or 100-percent disabled during the present Vietnam conflict.

Contingent nomination authority by the President pro tempore of the Senate

The bill amends existing law authorizing the nomination of five cadets or midshipmen at large by the Vice President by proposing language to allow the President pro tempore of the Senate to nominate candidates for vacancies authorized for the Vice President on those rare occasions when there is no Vice President.

Eligibility for appointment to the academies of members of the National Guard

Existing law authorizes the Secretaries of the Army and Air Force to appoint annually to their respective Academies 85 enlisted

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C. 20250
OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U. S. DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

Issued Oct. 10, 1966
For actions of Oct. 7, 1966
89th-2nd; No. 171

CONTENTS

ACP assignments.....	17	Foreign trade.....	32	Naval stores.....	12
Adjourned.....	24	Guam.....	10	Opinion poll.....	30
Appropriations.....	2	Hay.....	34	Organization.....	33
CCC.....	34	Hemisfair.....	13	Renewal loans.....	1
Commission.....	33	Inflation.....	22	Rural development.....	28
Conservation.....	16	Lands.....	4, 31	Senior citizens.....	26
Disaster relief.....	34	Legislative.....	Tariff.....	14
Education.....	3, 11	accomplishments.....	20, 27	Water pollution.....	6
Electrification.....	21	Legislative program.....	23	Water resources.....	5
Fish-wildlife.....	7	Livestock.....	29, 34	Watersheds.....	18
Foreign agricultural.....		Loans.....	1	Wildlife.....	7, 19
service.....	9	Milk.....	8	Wool imports.....	25
Foreign currencies.....	15	Mining.....	31		

HIGHLIGHTS: Senate passed bill to authorize rural renewal loans to non-profit organizations and for recreation. House committee reported bill to repeal Naval Stores Act. Both Houses agreed to conference report on foreign aid appropriation bill. House passed bill providing adjustment of Defense milk contracts when USDA orders prices raised. Sen. Mondale introduced and discussed bill to establish Executive Organization Review Commission. Sen. McCarthy introduced and discussed bill to authorize CCC purchase of hay for livestock in disaster areas.

SENATE

1. RURAL RENEWAL LOANS. Passed as reported S. 688, to permit rural renewal loans to local non-profit organizations in addition to public agencies, and to permit such loans to be made for recreational facilities. pp. 24696-7
2. APPROPRIATIONS. Passed, 61-4, as reported H. R. 17787, the public works appropriation bill. Senate conferees were appointed. pp. 24736-68

Both Houses agreed to the conference report on H. R. 17788, the foreign aid appropriation bill. This bill will now be sent to the President. pp. 24771-4, 24606-10

The Appropriations Committee reported with amendments H. R. 17637, the military construction appropriation bill (S. Rept. 1695). p. 24690

3. EDUCATION. Passed with amendment H. R. 13161, to strengthen and improve programs of assistance to elementary and secondary schools. S. 3046, which had been passed by the Senate, was indefinitely postponed. Senate conferees were appointed. House conferees have not been appointed. pp. 24812-13

Began debate on H. R. 14644, to extend and amend the Higher Education Facilities Act. pp. 24768-771, 24783-821, 24823

4. LANDS. The Interior and Insular Affairs Committee reported without amendment S. 84, to provide reimbursement to Wyo. for improvements on certain Eden project lands if such lands revert to the U. S. (S. Rept. 1699). p. 24691

5. WATER RESOURCES. Sen. Yarborough spoke on the possibility of redistributing surplus Canadian water to the arid Southwest. pp. 24713-4

6. WATER POLLUTION. Sen. Kennedy, Mass., inserted articles favoring additional water pollution control. pp. 24727-32

7. FISH-WILDLIFE. Agreed to the conference report on H. R. 9424, to provide for conservation and protection of endangered species of fish and wildlife. pp. 24782-3

HOUSE

8. MILK. Passed without amendment S. 3834, to provide for price adjustments in contracts for procurement of milk by the Defense Department when prices go up after USDA determinations. This bill will now be sent to the President. A similar bill, H. R. 17500, was tabled. pp. 24610-11

9. FOREIGN AGRICULTURAL SERVICE. Received from the Government Operations Committee a report, "Market Promotion Activity of Foreign Agricultural Service" (H. Rept. 2206). p. 24689

10. GUAM. The Interstate and Foreign Commerce Committee reported without amendment S. 2979, to extend coverage of the State Technical Services Act of 1965 to Guam (H. Rept. 2208). p. 24689

11. EDUCATION. The Interstate and Foreign Commerce Committee reported with amendment H. R. 13884, the proposed Professional Training and Cooperation Amendments (H. Rept. 2209). p. 24689

12. NAVAL STORES. The Agriculture Committee reported without amendment H. R. 7381, to repeal the Naval Stores Act (H. Rept. 2210). p. 24689

13. HEMISFAIR. Concurred in Senate amendments to H. R. 15098, relating to U. S. participation in the HemisFair 1968 Exposition to be held in San Antonio, Tex. This bill will now be sent to the President. pp. 24605-6

tion; it is the product of compromise. We have all shared in that compromise—the chairman of your committee, its veterans of service, its freshmen, and all the Members of this body.

Mr. PASSMAN. Mr. Speaker, I want to thank the distinguished gentleman from Massachusetts for his very kind remarks. But I must say again that the total request made in calendar year 1966 for foreign aid is the greatest amount since the inception of the aid program.

I want to thank the gentleman for pointing out that we succeeded in increasing the amount of funds for development loans for the Alliance for Progress by \$25 million. Some of us had good reasons for this action, thinking that if we were going to have to give money away it would be a little cheaper to ship it to Latin America than to ship it to the Far East, as we will save a little money because of a reduction in the freight rates. In addition, in my opinion, I think the Alliance is the most important program in the bill and I think it must succeed. Latin America is much more important to us than any other area in the world.

Mr. Speaker, again I say I do not think I am entitled to any commendations because, as far as I am concerned, I just do not feel that I am any longer doing a very creditable job, simply because the aid agencies request money far in excess of their actual needs, and one of the two branches has the wisdom to make some necessary reductions.

At one time we did our own work on this side, and we made substantial reductions, but apparently we have recommended excessive appropriations in recent years. Then the bill goes over to the other body, and they now do our work for us. In thanking the gentleman for his very gracious compliments, I must insist that the Members of the other body should also be complimented, but I hope that all the compliments are not premature because of the new policy of the aid agencies in submitting requests for supplemental appropriations, which I referred to earlier in my remarks.

But nevertheless I am very grateful to the distinguished gentleman for paying me a compliment that I do not actually deserve, because there is nothing about the bill that indicates to me that there is any saving effected, and there are a lot of requests coming down to be included in the supplemental bills.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the conference report.

The question was taken.

Mr. FINDLEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER. Evidently, a quorum is not present.

The doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 189, nays 89, not voting 154, as follows:

[Roll No. 346]

YEAS—189

Adams	Green, Pa.	Patten
Anderson, Ill.	Gubser	Pelly
Anderson, Tenn.	Halleck	Pepper
Annunzio	Halpern	Perkins
Barrett	Hanley	Philbin
Bates	Hanna	Pickle
Beckworth	Hansen, Wash.	Pike
Bell	Hardy	Pirnie
Bennett	Hathaway	Powell
Bingham	Hawkins	Price
Blatnik	Hays	Quie
Boggs	Hechler	Rees
Bolling	Helstoski	Reid, N.Y.
Bolton	Holfield	Rhodes, Pa.
Brademas	Holland	Rivers, S.C.
Brooks	Horton	Roberts
Broomfield	Hosmer	Robison
Burke	Howard	Rodino
Burton, Calif.	Irwin	Rogers, Colo.
Byrne, Pa.	Jacobs	Ronan
Byrnes, Wis.	Joelson	Rooney, N.Y.
Callan	Johnson, Calif.	Rosenthal
Cameron	Jones, Ala.	Rostenkowski
Celler	Karsten	Roybal
Clark	Karth	Ryan
Cleveland	Kastenmeier	St Germain
Cohelan	Kee	St. Onge
Conable	King, Calif.	Scheuer
Coote	Kirwan	Schweiker
Convers	Kluczynski	Selden
Corbett	Krebs	Scunner
Culver	Kunkel	Sickles
Curtis	Laird	Sisk
Daddario	Leggett	Slack
Daniels	Long, Md.	Smith, N.Y.
Delaney	McCarthy	Springer
Dent	McDade	Stafford
Diggs	McFall	Stratton
Downing	McGrath	Stubblefield
Dulski	Machen	Sullivan
Dwyer	Madden	Teague, Calif.
Evins, Tenn.	Mahon	Teague, Tex.
Farbstein	Mailliard	Tenzer
Farnsley	Mathias	Thompson, N.J.
Farnum	Matthews	Todd
Fascell	May	Trimble
Feighan	Meeds	Udall
Findley	Minish	Ullman
Flood	Mink	Van Deerlin
Fogarty	Monagan	Vanik
Ford, Gerald R.	Moorhead	Vivian
Fraser	Morgan	Waldie
Frelinghuysen	Morse	Watts
Friedel	Morton	Weltnier
Fulton, Pa.	Multer	White, Tex.
Gallagher	Murphy, Ill.	Widnall
Garmatz	Natcher	Wilson, Charles H.
Giaimo	Nedzi	Wright
Gibbons	Nelsen	Wydler
Gilbert	O'Hara, Mich.	Young
Gonzalez	Ottinger	Zablocki
Grabowski	Passman	
Green, Oreg.	Patman	

NAYS—89

Andrews, George W.	Fountain	Pool
Andrews, N. Dak.	Gathings	Quillen
Ashbrook	Gettys	Race
Ashmore	Goodell	Redlin
Baring	Grover	Reid, Ill.
Belcher	Hansen, Idaho	Reifel
Beets	Harsha	Rhodes, Ariz.
Brown, Clarence J., Jr.	Hull	Rogers, Fla.
Broyhill, N.C.	Hutchinson	Rumsfeld
Broyhill, Va.	Ichord	Satterfield
Buchanan	Jarman	Schneebeli
Burleson	Jennings	Secrest
Carter	Johnson, Okla.	Shipley
Chelf	Johnson, Pa.	Sikes
Clausen, Don H.	Jonas	Skubitz
Collier	Jones, Mo.	Smith, Va.
Cramer	King, N.Y.	Stanton
Cunningham	Landrum	Steed
Curtin	Langen	Talcott
Davis, Wis.	Latta	Taylor
de la Garza	Lennon	Thomson, Wis.
Derwinski	Long, La.	Tuten
Dole	McClory	Utt
Dowdy	McCulloch	Waggonner
Duncan, Tenn.	Marsh	Watson
Everett	Mills	Whalley
	Minshall	Whitener
	Mize	Whitten
	Mosher	Williams
	Poage	Willis
	Poff	Wyatt

NOT VOTING—154

Abbitt	Fallon	Moeller
Abernethy	Fino	Moore
Adair	Fisher	Morris
Addabbo	Flynt	Morrison
Albert	Foley	Moss
Andrews,	Ford,	Murphy, N.Y.
	William D.	Murray
	Fulton, Tenn.	Nix
Arends	Fuqua	O'Brien
Ashley	Gilligan	O'Hara, Ill.
Aspinall	Gray	O'Konski
Ayres	Greigg	Olsen, Mont.
Bandstra	Battin	Olson, Minn.
Berry	Grider	O'Neal, Ga.
Boland	Griffiths	O'Neill, Mass.
Bow	Gross	Pucinski
Bray	Gurney	Purcell
Brock	Hagan, Ga.	Randall
Brown, Calif.	Hagen, Calif.	Reinecke
Burton, Utah	Haley	Resnick
Cabell	Hall	Rivers, Alaska
Cahill	Hamilton	Rogers, Tex.
Callaway	Hansen, Iowa	Roncalio
Carey	Harvey, Ind.	Rooney, Pa.
Casey	Harvey, Mich.	Roudebush
Cederberg	Hébert	Roush
Chamberlain	Henderson	Saylor
Clancy	Herlong	Schisler
Clawson, Del	Hungate	Schmidhauser
Clevenger	Huot	Scott
Cooley	Jones, N.C.	Shriver
Corman	Keogh	Smith, Calif.
Craley	King, Utah	Smith, Iowa
Dague	Kornegay	Staggers
Davis, Ga.	Kupferman	Stalbaum
Dawson	Lipscomb	Stephens
Denton	Love	Sweeney
Devine	McDowell	Thomas
Dickinson	McEwen	Thompson, Tex.
Dingell	McMillan	Toll
Donohue	McVicker	Tuck
Dorn	Macdonald	Tunney
Dow	MacGregor	Tupper
Duncan, Oreg.	Mackay	Vigorito
Dyal	Mackie	Walker, Miss.
Edmondson	Martin, Ala.	Walker, N. Mex.
Edwards, Ala.	Martin, Mass.	Watkins
Edwards, Calif.	Martin, Nebr.	White, Idaho
Edwards, La.	Matsunaga	Wilson, Bob
Ellsworth	Michel	Wolff
Erlenborn	Miller	Yates
Evans, Colo.	Miller	Younger

So the conference report was agreed to.

The Clerk announced the following pairs:

On this vote:

Mr. Keogh for, with Mr. Tuck against.

Mr. O'Neill of Massachusetts for, with Mr. Abernethy against.

Mr. Murphy of New York for, with Mr. Abbott against.

Mr. Sweeney for, with Mr. Henderson against.

Mrs. Kelly for, with Mr. Kornegay against.

Mr. Hébert for, with Mr. Scott against.

Mr. Albert for, with Mr. O'Neal of Georgia against.

Mr. Addabbo for, with Mr. Morris against.

Mr. Aspinall for, with Mr. Moeller against.

Mr. Denton for, with Mr. Murray against.

Mr. Edwards of California for, with Mr. Fuqua against.

Mr. Arends for, with Mr. Flynt against.

Mr. Ayres for, with Mr. Stephens against.

Mr. Cahill for, with Mr. Rogers of Texas against.

Mr. MacGregor for, with Mr. Hungate against.

Mr. Fallon for, with Mr. Casey against.

Mr. Miller for, with Mr. Dorn against.

Mr. Foley for, with Mr. McMillan against.

Mr. Moss for, with Mr. Fisher against.

Mr. Gilligan for, with Mr. Del Clawson against.

Mr. Rivers of Alaska for, with Mr. Davis of Georgia against.

Mr. Staggers for, with Mr. Fino against.

Mr. Boland for, with Mr. Randall against.

Mr. Donohue for, with Mr. Walker of New Mexico against.

Mr. Dow for, with Mr. Roush against.

Mr. Mackay for, with Mr. Hagan of Georgia against.

Mr. McDowell for, with Mr. Jones of North Carolina against.

"That section 5362 of the Internal Revenue Code of 1954 (relating to removals of wine from bonded wine cellars) is amended by adding at the end thereof the following new subsection:

"(d) WITHDRAWAL FREE OF TAX OF WINE AND WINE PRODUCTS UNFIT FOR BEVERAGE USE.—Under such regulations as the Secretary or his delegates may deem necessary to protect the revenue, wine, or wine products made from wine, when rendered unfit for beverage use, on which the tax has not been paid or determined, may be withdrawn from bonded wine cellars free of tax. The wine or wine products to be so withdrawn may be treated with methods or materials which render such wine or wine products suitable for their intended use. No wine or wine products so withdrawn shall contain more than 12 percent of alcohol by volume, or be used in the compounding of distilled spirits or wine for beverage use or in the manufacture of any product intended to be used in such compounding."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

TAX TREATMENT OF CERTAIN DISTRIBUTIONS

Mr. MILLS. Mr. Speaker, I ask unanimous consent that the Committee of the Whole House on the State of the Union be discharged from further consideration of the bill (H.R. 11257) relating to the income tax treatment of certain distributions pursuant to the Bank Holding Company Act of 1956, as amended, and ask for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

Mr. BYRNES of Wisconsin. Mr. Speaker, reserving the right to object, and I do so to yield to the chairman of the committee for a brief explanation.

Mr. MILLS. Mr. Speaker, in 1956, the Bank Holding Company Act of 1956 made certain corporations bank holding companies. In general, bank holding companies are corporations which own more than 25 percent of the stock of two or more banks. In 1956, these corporations were compelled by law to distribute either their banking properties or their non-banking properties. Because they were required to make these distributions, Congress at that time permitted those distributions to be tax free to the shareholders. Accordingly, sections 1101 to 1103 of the Internal Revenue Code, inclusive, were then enacted, granting such tax free treatment. The tax free treatment applied only if the property distributed was acquired before May 15, 1955.

Under the 1956 act, a special exception was made for a corporation registered under the Investment Company Act of 1940 or affiliated with a corporation so registered. Under this exception, such a company was not considered a bank holding company even though it held 25 percent or more of the voting shares of two or more banks so long as it held these interests indirectly. This exception is removed by the 1966 amendments.

As a result, at least one corporation, Financial General Corp.—an affiliate of

the Equity Corp., which is a registered investment company—now a bank holding company and must dispose of either its banking or nonbanking assets. However, a substantial part of Financial General's property was acquired after May 15, 1955, but before April 12, 1965, the date of the introduction of the bill which led to the 1966 amendments.

Your committee believed it was appropriate to extend essentially the same type of tax-free treatment to corporations which became bank holding companies by virtue of the 1966 legislation as was originally extended to corporations which became bank holding companies because of the 1956 legislation. The amendment applies to holdings acquired before April 12, 1965, the date when there first was an indication that holdings must be disposed of.

The relief granted is also consistent with the treatment Congress has provided elsewhere when a divestiture was compelled by law as, for instance, in the case of distributions required to affect the policies of the Federal Communications Commission or the Securities and Exchange Commission.

For the reasons I have just outlined, this bill extends the tax-free treatment originally provided with respect to distributions required by the 1956 act to distributions required for the first time by the 1966 amendments. The property to be distributed tax free must have been acquired before April 12, 1965. However, to be sure that no opportunity for tax manipulation is created, the tax-free treatment is made available only if all of the distributions made in kind—that is, other than in money—are made pro rata, as to all shareholders.

Our committee unanimously agreed that any corporation now first being brought under the control of the Federal Reserve Board should receive the same tax treatment as provided for corporations first brought under such control in 1956. For this reason, I urge the adoption of this bill.

Mr. Speaker, when this matter was passed by the Congress, reported from the Senate Committee on Banking and Currency and also from the House Committee on Banking and Currency, conversations were had with us about the tax consequences of the action of the Banking and Currency Committees of the House and the Senate.

The gentleman from New York [Mr. MULTER] a member of the Committee on Banking and Currency of the House, introduced this bill in order that the Ways and Means Committee could consider it separate from the action of the Banking and Currency Committee, which had no jurisdiction over the tax consequences of that committee's action in the 1966 bill.

Mr. Speaker, the committee believed that this matter should be handled in this way and that it was equitable to extend the treatment here which was extended initially with respect to the 1956 action.

Mr. BYRNES of Wisconsin. Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Clerk read the bill, as follows:

H.R. 11257

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1102 of the Internal Revenue Code of 1954 (relating to special rules for income tax treatment of distributions pursuant to the Bank Holding Company Act of 1956) is amended by adding at the end thereof the following new subsection:

"(e) CERTAIN BANK HOLDING COMPANIES.—This part shall apply in respect of any company which becomes a bank holding company as a result of the enactment of the Act entitled "An Act to amend the Bank Holding Company Act of 1956" (H.R. 7371, 89th Cong.), with the following modifications:

"(1) Subsections (a) (3) and (b) (3) of section 1101 shall not apply.

"(2) Subsections (a) (1) and (2) and (b) (1) and (2) of section 1101 shall apply in respect of distributions to shareholders of the distributing bank holding corporation only if all distributions to each class of shareholders which are made—

"(A) after September 23, 1965, and
"(B) on or before the date on which the Board of Governors of the Federal Reserve System makes its final certification under section 1101(e),

are pro rata. For purposes of the preceding sentence, any redemption of stock made in whole or in part with property other than money shall be treated as a distribution.

"(3) In applying subsections (c) and (d) of section 1101 and subsection (b) of section 1103, the date "September 23, 1965" shall be substituted for the date "May 15, 1955".

"(4) In applying subsection (d) (3) of section 1101, the date of the enactment of this subsection shall be treated as being the date of the enactment of this part.

"(5) In applying subsection (b) (2) (A) of section 1103, the reference to the Bank Holding Company Act of 1956 shall be treated as referring to such Act as amended by H.R. 7371, Eighty-ninth Congress."

With the following committee amendments:

Page 2, line 2, strike out "(H.R. 7371, 89th Cong.)" and insert ", approved July 1, 1966 (Public Law 89-485)."

Page 2, line 11, strike out "September 23," and insert "April 12,"

Page 2, line 21, strike out "September 23," and insert "April 12,"

Page 3, line 6, strike out "H.R. 7371, Eighty-ninth Congress" and insert "Public Law 89-485".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

INTEREST ON INCOME TAX REFUNDS AND QUICK REFUNDS OF INVESTMENT CREDIT CARRY-BACKS

Mr. MILLS. Mr. Speaker, I ask unanimous consent that the Committee of the Whole House on the State of the Union be discharged from further consideration of the bill (H.R. 11660) relating to interest on income tax refunds made within 45 days after the filing of the tax return, and ask for its immediate consideration.

The Clerk read the title of the bill.



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Public Law 89-696
89th Congress, S. 3834
October 19, 1966

An Act

To amend chapter 141 of title 10, United States Code, to provide for price adjustments in contracts for the procurement of milk by the Department of Defense.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 141 of title 10, United States Code, is amended—

(1) by inserting at the end thereof the following new section:

“§ 2389. Contracts for the procurement of milk; price adjustment

“Under regulations prescribed by the Secretary of Defense, any contract for the procurement of fluid milk for beverage purposes which was being performed on or after March 1, 1966, may be amended to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture on or after March 1, 1966, increasing the price of milk. A price adjustment shall not be made unless it has been determined by the Department that—

“(1) such amount is not included in the contract price;
“(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

“(3) the contractor will suffer a loss, not merely a diminution of anticipated profit, under the contract because of such increases in producer prices.; and

(2) by inserting the following new item in the analysis thereof:

“2389. Contracts for the procurement of milk; price adjustment.”

Approved October 19, 1966, 12:55 p.m., en route
New Zealand from Samoa.

Defense Department contracts.
Milk procurement.
70A Stat. 135.
10 USC 2381-2388.

80 STAT. 1056.

80 STAT. 1057.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 2185 accompanying H. R. 17500 (Comm. on Armed Services).

SENATE REPORT No. 1668 (Comm. on Armed Services).

CONGRESSIONAL RECORD, Vol. 112 (1966):

Oct. 4: Considered and passed Senate.

Oct. 7: Considered and passed House, in lieu of H. R. 17500.

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